

response costs to be incurred in the future to remediate the hazard.

The Parties

3. The plaintiff Milwaukee Die Casting Company, Inc. ("MDCC") is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at 4132 North Holton Street, Milwaukee, WI 53211. MDCC is engaged in the business of die casting and trimming.

4. The plaintiff Slyman Industries, Inc. ("SI") is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at 800 West Liberty Street, Medina, OH 44256. SI is a holding company responsible for the management, among other companies, of MDCC.

5. The plaintiff Theresa A. Slyman ("Slyman") is an individual citizen of the State of Ohio and resides at [REDACTED]  
[REDACTED]

6. The defendant Fisher Controls International, Inc. ("Fisher") is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at 8000 Maryland Avenue, P.O. Box 14755, St. Louis, MO 63178. Fisher is engaged in the business of manufacturing regulators and control valves.

Jurisdiction and Venue

7. This Court has jurisdiction of the subject matter of this action pursuant to 42 U.S.C. §§ 9607(a) and 9613(b), 28 U.S.C. § 1331 and principles of pendent jurisdiction. Declaratory relief is available pursuant to 28 U.S.C. § 2201. Venue is proper in this

Court under 28 U.S.C. § 1391 and 42 U.S.C. § 9613(b). These claims arose in this district.

Factual Allegations Common to All Claims

8. From approximately 1975 until February 23, 1982, Fisher was the sole owner of the common shares of MDCC. During that time period, Fisher owned and operated MDCC.

9. On February 23, 1982, Fisher sold all of the common shares of MDCC to SI pursuant to a Purchase Agreement - Common Shares dated February 23, 1982.

10. At all times while Fisher was the owner and operator of MDCC, MDCC had its principal place of business on two parcels of real property in Milwaukee County located on North Holton and West Hubbard Streets, Milwaukee, WI 53211, more particularly described as:

That part of Government Lot 4 in the SW  $\frac{1}{4}$  Fractional Section 4, T 7 N, R 22 E, in the city of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at a point which is 855.00 ft. North of the South line and 660.00 ft. East of the West line of said SW  $\frac{1}{4}$ ; thence East on a line which is 855.00 ft. North of and parallel with the South line of said  $\frac{1}{4}$  Section 380.50 ft. to a point in the West line of the Westerly right of way conveying to the Chicago, Milwaukee and St. Paul Railway Company by deed recorded in the Office of the Register of Deeds of Milwaukee County in Volume 822 on Page 227; thence North along said West line of said right of way 465.00 ft. to the North Line of said Lot 4; thence West on said North line 380.50 ft. to a point 660.00 ft. East of the West line of said SW  $\frac{1}{4}$ ; thence South on a line 465.00 to the point of beginning, excepting the West 33.00 ft. for street purposes.

Lots numbered Twenty-six (26), Twenty-seven (27), Twenty-eight (28) and the South Nine (9) feet of Lot numbered Twenty-nine (29) in Block numbered One (1) in Jos. Buchta's Subdivision of Lots numbered Ninety-two (92), Ninety-three (93), One Hundred and Three (103) and One Hundred and Four (104), in Comstock & Williams Subdivision of Lots numbered One (1), Two (2), Three (3), Four (4) and Five (5) of Section numbered Five (5) and the Southeast One Quarter( $\frac{1}{4}$ ) of Section numbered Five (5)

and the Northwest One Quarter ( $\frac{1}{4}$ ) of Section numbered Four (4) in Township numbered Seven (7) North of Range numbered Twenty-two (22) East, in the City of Glendale.

(collectively referred to herein as "the Property").

11. Prior to February 23, 1982, Fisher became the legal and beneficial owner of the Property.

12. On February 23, 1982, Fisher sold the Property to Theresa Slyman pursuant to a Purchase Agreement dated February 23, 1982.

13. Upon information and belief, at the time Fisher owned and operated MDCC, employees of MDCC and agents of Fisher disposed or caused the disposal of hazardous substances, including without limitation PCBs, on MDCC's premises and on the Property, and released or caused the release of these substances into the environment. PCBs are a hazardous substance within the meaning of 42 U.S.C. § 9601(14) and 40 C.F.R. § 302.

14. As a result of Fisher's release of the PCBs on the premises and on the Property, and on information and belief, PCBs in hazardous concentrations are present on MDCC's premises and on the Property.

15. MDCC has not released or caused the release of PCBs onto MDCC's premises or the Property since the sale of the MDCC shares in 1982.

16. In September, 1991, MDCC's lender reported the results of an environmental audit of MDCC and the Property, and informed the plaintiffs that the MDCC premises and the Property were contaminated with PCBs. The report prepared by the lender's environmental consultant, together with the follow-up sampling, revealed PCB contamination on concrete and wooden floors, utility

service tunnels, sewer trenches, soils and in other locations on the premises and the Property.

17. In March, 1992, the plaintiffs engaged environmental consultants to conduct a Phase II audit of the condition of the property. To date, the plaintiffs have incurred costs and fees in excess of \$100,000 in attempting to learn the true condition of the PCB contamination of MDCC's premises and of the Property and in attempting to mitigate the effects of the discovery of the contamination.

18. On further information and belief, the costs of decontaminating MDCC's premises and the Property, including documentation, labor, equipment, materials, transportation and disposal may exceed \$1,500,000.00, and may cause substantial interruption to MDCC's business. However, as of the date of this amended complaint, the actual costs of remediation and clean up are not determined.

**FIRST CLAIM FOR RELIEF**  
**(Relief Under the Comprehensive**  
**Environmental Response, Compensation and Liability Act)**

19. The plaintiffs reallege and incorporate here by reference the allegations contained in paragraphs 1 through 18.

20. The premises and equipment of MDCC and the Property, independently or collectively, constitute a "facility" within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601(9).

21. Fisher was an "owner" and/or "operator" of the facility within the meaning of 42 U.S.C. §§ 9601(20)(A) and 9607(a) at the time hazardous substances were disposed on the premises of MDCC and/or the Property. Upon information and belief, Fisher was

exercising control over and actively participating in the activities of MDCC at the time PCBs were disposed on the premises of MDCC and the Property.

22. There has been a release or releases, or a threatened release or releases, within the meaning of 42 U.S.C. § 9601(22) of hazardous substances on the premises of MDCC and the Property, in particular, PCBs.

23. The release or releases, or threatened release or releases, of hazardous substances from the facility has caused the plaintiffs to incur costs of response, including but not limited to sampling, monitoring and exposure assessment costs; costs of experts to analyze the information gathered and develop removal and/or remedial responses; and costs of investigating and enforcing plaintiffs' CERCLA claim, including, but not limited to, attorney fees. These costs were necessarily incurred in order to respond to the release of PCBs from the facility, and are recoverable under 42 U.S.C. § 9607(a).

24. The response actions taken by the plaintiffs, and the costs incurred thereby, are and were consistent with the national contingency plan, addressing responses to releases of hazardous substances, pursuant to 42 U.S.C. §§ 9601(23) and 9607(a) and 40 C.F.R. § 300.71(a)(2)(ii).

25. Fisher is liable for the costs of response incurred by the plaintiffs to date.

26. Pursuant to 42 U.S.C. § 9607(a), Fisher is liable for the interest on the response costs recoverable by the plaintiffs.

WHEREFORE, the plaintiffs Milwaukee Die Casting Company, Inc., Slyman Industries, Inc. and Theresa A. Slyman demand judgment in

their favor against defendant Fisher Controls International, Inc. as follows:

1. Awarding compensatory damages in an amount to be determined at trial, sufficient to compensate plaintiffs for all allowable response costs which plaintiffs have incurred through the date of trial with respect to the hazardous conditions which exist at the premises and on the Property.

2. Awarding the plaintiffs their costs and allowable attorney fees incurred in bringing this action.

3. Awarding such other relief as this Court deems just and proper.

**SECOND CLAIM FOR RELIEF**  
**(Contribution)**

27. The plaintiffs reallege and incorporate here by reference the allegations contained in paragraphs 1 through 26.

28. As a person liable under 42 U.S.C. § 9607(a), Fisher is liable to the plaintiffs under 42 U.S.C. § 9613(f) for the response costs incurred by the plaintiffs.

29. Under principles of common law and equity, Fisher should be held liable to the plaintiffs for all or part of the response costs and damages incurred by the plaintiffs as a result of the disposal of PCBs on the premises of MDCC and the Property prior to the sale of the MDCC shares to SI and the Property to Slyman.

WHEREFORE, the plaintiffs Milwaukee Die Casting Company, Inc., Slyman Industries, Inc. and Theresa A. Slyman demand judgment in their favor against defendant Fisher Controls International, Inc. as follows:

1. Awarding compensatory damages in an amount to be determined at trial, sufficient to compensate plaintiffs for all allowable response costs which plaintiffs have incurred through the date of trial with respect to the hazardous conditions which exist at the premises and on the Property.

2. Awarding the plaintiffs their costs and allowable attorney fees incurred in bringing this action.

3. Awarding such other relief as this Court deems just and proper.

**THIRD CLAIM FOR RELIEF**  
**(Declaratory Judgment)**

30. The plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 29.

31. As a result of Fisher's release of PCBs into the premises and on the Property, there exists an actual and present controversy between the plaintiffs and Fisher within the jurisdiction of this Court, as to the liability and responsibility of Fisher for future costs of remediation and clean-up of the premises and the Property, which controversy may be determined by a judgment of this Court.

WHEREFORE, the plaintiffs Milwaukee Die Casting Company, Inc., Slyman Industries, Inc. and Theresa A. Slyman demand judgment in their favor against defendant Fisher Controls International, Inc. as follows:

1. Declaring, pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 9613(g)(2), that Fisher is liable for all future costs of remediation or clean-up of the premises and the Property as required under CERCLA and any other environmental law, and that Fisher's liability to plaintiffs for all response costs or damages will be binding

upon any subsequent action or actions to recover further costs or damages.

2. Awarding the plaintiffs their costs and allowable attorney fees incurred in bringing this action.

3. Awarding such other relief as this Court deems just and proper.

Dated this 26th day of January, 1995.

MILWAUKEE DIE CASTING CO., SLYMAN  
INDUSTRIES, INC. and THERESA A.  
SLYMAN

By: 

One of Their Attorneys

James R. Figliulo  
Carl A. Gigante  
Carmen D. Caruso  
FORAN & SCHULTZ  
30 North LaSalle Street  
Suite 3000  
Chicago, Illinois 60602  
(312) 368-8330

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21

1/26/95 JMF

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING CO.,  
et al.,

Plaintiffs,

v.

FISHER CONTROLS INTERNATIONAL,  
INC.,

Defendant.

No. 93-C-0325

Judge Reynolds

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on January 27, 1995, we will file with the Clerk of the United States District Court, Eastern District of Wisconsin, Historic Federal Courthouse, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202-4583, Plaintiffs' AMENDED COMPLAINT, a copy of which is attached hereto.

MILWAUKEE DIE CASTING CO., SLYMAN  
INDUSTRIES, INC. and THERESA A.  
SLYMAN

By: Carmen D. Caruso

One of Their Attorneys

James R. Figliuolo  
Carl A. Gigante  
Carmen D. Caruso  
FORAN & SCHULTZ  
30 North LaSalle Street  
Suite 3000  
Chicago, Illinois 60602  
(312) 368-8330

**CERTIFICATE OF SERVICE**

The undersigned states on oath, that she caused a copy of the below named pleading(s) to be served upon the attorneys named below, at their respective addresses as indicated on January 26, 1995.

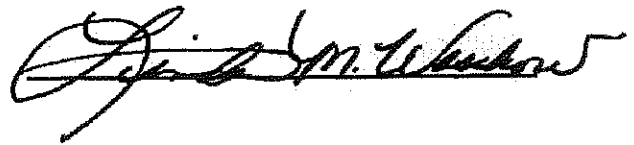
**AMENDED COMPLAINT**

By Mail:

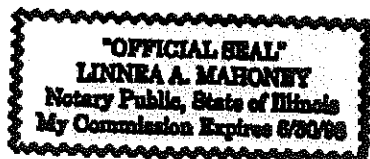
Michael Ash  
James G. Schweitzer  
GODFREY & KAHN, S.C.  
780 North Water Street  
Milwaukee, Wisconsin 53202

By Mail:

Andrew R. Running  
Robert B. Ellis  
KIRKLAND & ELLIS  
200 East Randolph Drive  
Chicago, Illinois 60601

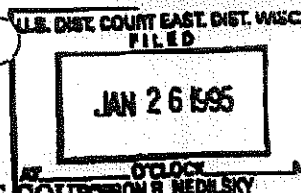


SUBSCRIBED and SWORN to before me  
this 26th day of January, 1995.

  
NOTARY PUBLIC

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Copy mailed to attorneys for  
perusal by the court pursuant  
to rule 77(b) Federal rules of  
civil procedure. 1-26-85



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING CO.,  
SLYMAN INDUSTRIES, INC., and  
THERESA A. SLYMAN,

Plaintiffs,

v.

Civil Action No. 93-C-0325

FISHER CONTROLS INTERNATIONAL,  
INC.,

Defendant.

**DECISION AND ORDER DENYING IN PART AND  
GRANTING IN PART MOTION TO AMEND COMPLAINT**

In this environmental cleanup action, the plaintiffs have moved to amend their complaint by eliminating their state law claims. Because a dismissal of those claims without prejudice would result in undue prejudice to the defendant Fisher Controls International, Inc. ("Fisher Controls"), the court shall deny the motion.

**I. BACKGROUND**

Plaintiffs filed this action on April 12, 1993, under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and under state law theories of breach of contract, negligent misrepresentation, intentional misrepresentation, and "strict liability" misrepresentation, seeking a declaration that Fisher is responsible for past and future costs associated with alleged PCB contamination at Milwaukee Die Casting Co. in Milwaukee, Wisconsin. Fisher answered plaintiffs' complaint on September 27, 1993, and filed

an amended answer on December 1, 1993. The answers asserted that plaintiffs' state claims were time-barred under Wisconsin law.

This case is nearly two years old now, but plaintiffs' discovery did not even begin until recently because they have been unable or unwilling to keep their attorneys, and have had to substitute attorneys on two occasions.<sup>1</sup> On December 3, 1994, plaintiffs filed a motion for leave to amend complaint. Proposed amendments to the CERCLA claims in counts I through III of the proposed amended complaint are unopposed.

However the motion seeks dismissal without prejudice of their state law claims for breach of contract, fraud, and negligence, and strict liability misrepresentation. Plaintiffs' motion represents to this court that dismissal without prejudice is meant to "streamline" this litigation and "reduce[] the number of claims that Fisher will have to defend against." (Pls.' Mot. ¶ 5.) Plaintiffs' motion also asserts that granting it will result in "no possible prejudice to Fisher." *Id.* However, the affidavits submitted by the defendant and plaintiffs show that while the plaintiffs may have no present intention to refile their state law claims in a state with a more

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<sup>1</sup>On April 24, 1994, Whyte Hirschboeck moved to withdraw as counsel for the plaintiffs. The court denied the motion on April 29, 1994. Whyte Hirschboeck filed a second motion to withdraw on May 4, 1994, and on May 17, 1994, the court ordered that the action would be dismissed for lack of prosecution unless the plaintiffs moved to substitute counsel within 30 days. On July 5, 1994, the court granted the plaintiffs' motion for substitution of counsel, and the firms of Pugh, Jones & Johnson and Brown & Bryant become lead counsel with Whyte Hirschboeck as local counsel. On August 26, 1994, Pugh, Jones & Johnson and Brown & Bryant moved to withdraw as counsel and at a September 9, 1994 hearing, the court gave the plaintiffs 14 days to substitute counsel and to pay the defendants' counsel fees and costs expended on the motions to withdraw. On September 29, 1994, the court granting plaintiffs' September 22, 1994 motion to substitute lead counsel. New counsel is Moran & Schultz in Chicago.

favorable statute of limitations than Wisconsin, they do not wish to be foreclosed from doing so. (See Jan. 5, 1995 Caruso Aff. ¶ 2.; Running Decl. ¶¶ 2-3; Ellis Decl. ¶¶ 2-3.)

## II. ANALYSIS

Rule 15 of the Federal Rules of Civil Procedure governs motions to amend and gives courts discretion to allow amendments to pleadings. Under that rule, leave to amend "shall be freely given when justice so requires."<sup>2</sup> However, the privilege is not absolute, and a court may deny a motion to amend where there has been undue delay or there would be undue prejudice to the opposing party, or when the amendment would be futile. Wade v. Hopper, 993 P.2d 1246, 1249 (7th Cir.), cert. denied, 114 S. Ct. 193 (1993) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

The amendments to the CERCLA claims in counts I through II of the proposed amended complaint are unopposed and will be allowed.

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<sup>2</sup>Fed. R. Civ. P. 15(a) provides:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

The plaintiffs' motion to amend, however, is also a motion for voluntary dismissal without prejudice of the state law claims brought in their original complaint. Fisher Controls has asserted a Wisconsin statute of limitations defense against these claims. Given that dismissing the claims without prejudice could potentially deprive Fisher Controls of that legal defense, and given the history of delay already developed in this matter, the court shall not allow the plaintiffs to drop their state law claims without prejudice.

Plaintiffs' counsel has acknowledged that the plaintiffs seek a dismissal without prejudice to leave open the possibility of refileing those claims in an Ohio court. Fisher Controls asserts that the state claims are barred by the applicable Wisconsin statutes of limitations, and in order to bolster that claim, Fisher Controls has brought a motion for partial summary judgment to dismiss those state claims as time-barred in response to the plaintiffs' motion to amend.<sup>3</sup>

The parties have cast their arguments under Rule 41(a) of the Federal Rules of Civil Procedure, which gives courts discretion to allow voluntary dismissal of actions without prejudice.<sup>4</sup> However, Rule 41(a) governs the dismissal of entire actions, and when plaintiffs wish to eliminate some but not all claims without dismissing as to any of the defendants, Rule 15 technically governs the issue. 5 Moore's Federal Practice ¶ 41.06-1, at 41-82 - 41-84

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<sup>3</sup>The dispositive motions filing deadline is January 27, 1995, and apparently Fisher Controls was originally planning to bring this statute of limitations defense up in a single motion for complete summary judgment of all claims. (See Def.'s Mot. at 2, n.1.)

<sup>4</sup>Once a complaint is answered, when the defendants do not stipulate to the Rule 41(a) dismissal, the dismissal can only be had "upon order of the court and upon such terms and conditions as the court deems proper. . . . Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice." Fed. R. Civ. P. 41(a). Like motions to amend, the granting or denial of a motion to dismiss an action without prejudice under Rule 41(a)(2), is within the discretion of this court. Ratkovich v. Smith Kline, 951 F.2d 155 (7th Cir. 1991).



(1992). Despite their differences, both Rule 15(a) and Rule 41(a) require a consideration of prejudice to the defendant. The courts of appeals are split on the issue of whether a defendant who has asserted a valid statute of limitations defense has shown such prejudice that a district court may not grant a voluntary dismissal of a cause of action. Compare Metropolitan Fed. Bank, F.S.B. v. W.R. Grace & Co., 999 F.2d 1257, 1262-63 (8th Cir. 1993) (abuse of discretion to grant voluntary dismissal where nonmoving party demonstrates valid statute of limitations defense to claims sought to be dismissed); Ikospentakis v. Thalassic S.S. Agency, 915 F.2d 176, 178-179 (5th Cir. 1990) (abuse of discretion to grant plaintiff's motion to voluntarily dismiss Jones Act Suit and allow plaintiff to refile in state courts, in which doctrine of forum non conveniens was not recognized, because dismissal of federal suit would cause defendants "plain legal prejudice") with McCants v. Ford Motor Co., 781 F.2d 855, 859 (11th Cir. 1986) (no abuse of discretion to dismiss a claim without prejudice despite the loss of a valid statute of limitations defense). However, when a defendant would suffer the loss of a potential legal advantage, and face a possible new action in a state forum after extensive delay in the federal forum chosen by the plaintiffs, this court will not allow the voluntary dismissal.<sup>5</sup> See Rodriguez v. Marks Bros. Pickle Co., 102 F.R.D. 104 (E.D. Wis. 1984).

Given the delay in reaching the issues in this case that Fisher Controls has already suffered, and the assertion of a statute of limitations defense, this court will not allow the

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<sup>5</sup>The court sets aside the issue of the res judicata effect of a dismissal in this court on statute of limitations grounds. Judge Ripple's recent decision in the case of Reinke v. Bodea, No. 93-1966 (7th Cir., Jan. 10, 1995) offers keen insight into the matter of the res judicata effect of a foreign forum's dismissal on statute of limitations grounds.

plaintiffs to eliminate their state law claims from their original complaint. They will either have to pursue them in this forum or agree to dismiss them with prejudice.

**IT IS THEREFORE ORDERED** that the plaintiffs' motion to amend their complaint by eliminating their state law claims is **DENIED**.

**IT IS FURTHER ORDERED** that the plaintiffs' motion to amend Counts I through III in their complaint is **GRANTED**, and the plaintiffs shall file their amended complaint as allowed on or before five days from the date of this order.

**IT IS FURTHER ORDERED** that the plaintiffs' motion for extension of time to file its response to the defendant's motion for summary judgment is **GRANTED** in part and the plaintiffs shall file and serve their response fifteen (15) days from the date of this order.

Dated at Milwaukee, Wisconsin, this 26 day of January, 1995.

UNITED STATES DISTRICT COURT

By John W. Reynolds  
John W. Reynolds  
Judge



Copy mailed to attorneys for  
parties by the Court pursuant  
to Fed. R. Civ. P. 77(d). *file*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

U.S. DIST. COURT EAST DIST. WISC.	
FILED	
JAN 25 1995	
AT	O'CLOCK M
SOFRON B. NEDILSKY	

*gm/f*

MILWAUKEE DIE CASTING CO.,  
SLYMAN INDUSTRIES, INC. and  
THERESA A. SLYMAN

Plaintiffs,

v.

No. 93-C-0325

FISHER CONTROLS INTERNATIONAL,  
INC.,

Judge Reynolds

Defendant.

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ORDER

This case comes before the Court on the Stipulation of the parties to amend the Order dated August 30, 1994 to permit limited discovery after January 20, 1995. The Court has reviewed the Stipulation of the parties and approves.

IT IS HEREBY ORDERED that the Order dated August 30, 1994 is amended as provided in the Stipulation of the Parties filed on January 23, 1995.

SO ORDERED:

*John W. Reynolds*  
Hon. John W. Reynolds  
United States District Judge

Dated: 1/25/95

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58

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

U.S. DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
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MILWAUKEE DIE  
CASTING CO. et al.,

Plaintiffs,

v.

FISHER CONTROLS  
INTERNATIONAL, INC.

Defendant.

No. 93-C-0325

Judge Reynolds

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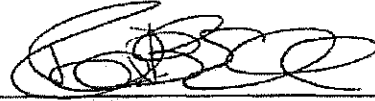
**FISHER CONTROLS INTERNATIONAL, INC.'S  
MOTION FOR AN EXTENSION OF TIME**

Defendant Fisher Controls International, Inc. ("Fisher") hereby moves for an extension of the cutoff date for filing dispositive motions until February 10, 1995. In support of its motion, Fisher states:

1. On August 30, 1994 this Court set the cutoff date for dispositive motions as January 27, 1995.
2. The final nonexpert deposition in this case, the deposition of Larry Kruse, was conducted on January 19, 1995, and the court reporter has informed Fisher that the transcript of that deposition will be completed at the earliest on Thursday, January 26, 1995.
3. Fisher plans to file a motion for summary judgment in this action and needs the deposition of Larry Kruse to prepare that motion.
4. Therefore, Fisher requests a short 14 day extension of time, to and including February 10, 1995, in which to file dispositive motions.
5. Plaintiffs have informed Fisher that they do not object to this motion for an extension of time

WHEREFORE, defendant Fisher Controls International, Inc respectfully requests that this Court grant its Motion for an Extension of Time and extend the date for filing dispositive motions in this action to February 10, 1995.

Dated: January 23, 1995



One of the attorneys for Defendant  
Fisher Controls International, Inc.

Michael Ash  
GODFREY & KAHN, S.C.  
780 North Water Street  
Milwaukee, Wisconsin 53202  
(414) 273-3500

Andrew R. Running  
Robert B. Ellis  
KIRKLAND & ELLIS  
200 East Randolph Drive  
Chicago, Illinois 60601  
(312) 861-2000

(Inquiries May Be Directed To Mr. Ash.)

1/25/95  
OK  
JWR

57



1/23/95

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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MILWAUKEE DIE CASTING CO.,  
SLYMAN INDUSTRIES, INC. and  
THERESA A. SLYMAN

Plaintiffs,

v.

No. 93-C-0325

FISHER CONTROLS INTERNATIONAL,  
INC.,

Judge Reynolds

Defendant.

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MOTION FOR LEAVE TO DEFER BRIEFING SCHEDULE  
ON DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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The plaintiffs, Milwaukee Die Casting Co., Slyman Industries, Inc. and Theresa A. Slyman (collectively, "Plaintiffs") hereby move the Court to defer the briefing schedule on the Defendant's Motion for Partial Summary Judgment. In support of this motion, the Plaintiffs state as follows:

1. On December 2, 1994, the Plaintiffs served their Motion for Leave to Amend Complaint. The Plaintiffs' motion proposes that the Plaintiffs' state law claims be dismissed without prejudice.

2. On December 22, 1994, the defendant Fisher Controls International, Inc. ("the Defendant") served its Motion for Partial Summary Judgment. The Defendant's motion seeks the dismissal of the Plaintiffs' state law claims with prejudice, asserting that the state law claims are barred by the applicable statute of limitations.

3. The Plaintiffs' response to the Defendant's Motion for Partial Summary Judgment is due to be filed on or before January 23, 1995.

4. If the Court grants the Plaintiffs' motion seeking the dismissal of the state law claims without prejudice, then the Defendant's motion for partial summary judgment on those claims would become moot.

5. In the interests of expediency, and in order to avoid briefing that probably is unnecessary, the Plaintiffs respectfully request the entry of an order permitting the Plaintiffs to wait until the Court rules on the pending Motion for Leave to Amend Complaint before responding to the Defendant's Motion for Partial Summary Judgment. Further, the Plaintiffs respectfully request that, if the Court does not grant the Plaintiffs' Motion for Leave to Amend Complaint, the Plaintiffs be permitted to serve their response to the Defendant's Motion for Partial Summary Judgment be extended to thirty (30) days from the date of such order as the Court may enter denying the Plaintiffs' Motion for Leave to Amend Complaint.

WHEREFORE, the Plaintiffs request the entry of an order deferring the briefing schedule on the Defendants' Motion for Partial Summary Judgment, providing that the Plaintiffs may file their response to the Defendant's Motion thirty (30) days from the date of such order as the Court may enter (if any) denying the Plaintiffs' Motion for Leave to Amend Complaint.

Dated this 23rd day of January, 1995.

MILWAUKEE DIE CASTING CO.,  
SLYMAN INDUSTRIES, INC. and  
THERESA A. SLYMAN

Richard J. Sankovitz  
One of Their attorneys

James R. Figliulo  
Carl A. Gigante  
Carmen D. Caruso  
FORAN & SCHULTZ  
30 North LaSalle Street  
Suite 3000  
Chicago, Illinois 60602  
(312) 368-8330

Richard J. Sankovitz  
WHYTE HIRSCHBOECK DUDEK S.C.  
Suite 2100  
111 East Wisconsin Avenue  
Milwaukee, WI 53202  
(414) 273-2100



11/2/85

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

**MILWAUKEE DIE  
CASTING CO. et al.,**

**Plaintiffs,**

**v.**

**FISHER CONTROLS  
INTERNATIONAL, INC.**

**Defendant.**

**No. 93-C-0325**

**Judge Reynolds**

**FISHER CONTROLS INTERNATIONAL, INC.'S  
SURREPLY IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR LEAVE TO AMEND COMPLAINT**

**INTRODUCTION**

Plaintiffs' attempt to characterize their Motion for Leave to Amend Complaint as an effort to "streamline" this litigation is disingenuous. Plaintiffs' carefully worded Reply, which states that plaintiffs have no present intention to refile their state law claims, plainly shows that they contemplate the possibility of refiling those claims in Ohio state court in an attempt to defeat Fisher's statute of limitations defense. Plaintiffs' counsel, Carmen Caruso, has acknowledged that plaintiffs seek a dismissal without prejudice to leave open the possibility of refiling those claims in an Ohio court. Mr. Caruso's affidavit does not deny this. Allowing plaintiffs to obtain a dismissal without prejudice in this case, so that they can shop for a forum that could deprive Fisher of a valid defense under Wisconsin law, would result in clear legal prejudice to Fisher. Such an attempted abuse of Rule 41(a)(2) has been rejected by this Court and others, and likewise should be rejected in this case.

## ARGUMENT

### **A. Dismissal of Plaintiffs' State Law Claims Without Prejudice Will Result In Legal Prejudice To Fisher.**

This Court has recognized that dismissal of an action without prejudice is inappropriate where the plaintiff's motive for seeking dismissal is "an obvious attempt to shop for a forum which could deprive the defendant of a good and valid defense under Wisconsin law . . . ." Rodriguez v. Marks Bros. Pickle Co., Inc., 102 F.R.D. 104, 106 (E.D. Wis. 1984).<sup>1</sup> In support of their assertion that the potential loss of a statute of limitations defense does not constitute legal prejudice, plaintiffs cite McCants v. Ford Motor Co., 781 F.2d 855 (11th Cir. 1986). Plaintiffs fail to mention, however, that McCants represents the minority view in the federal appeals courts.

In Phillips v. Illinois Central Gulf R.R., 874 F.2d 984, 987 (5th Cir. 1989), the Fifth Circuit held that forum shopping constitutes legal prejudice if it could deprive the defendant of a valid statute of limitations defense:

[A] second lawsuit on the same facts is not sufficiently prejudicial to the defendant to justify denial of a Rule 41(a)(2) motion to dismiss. . . . In this case, however, the facts in the second lawsuit would differ in that the defendant would be stripped of an absolute [statute of limitations] defense to the suit — the difference between winning the case without a trial and abiding the unknown outcome of such a proceeding. If this does not constitute clear legal prejudice to the defendant, it is hard to envision what would.

(citations omitted, emphasis added). Likewise, the Eighth Circuit in Metropolitan Fed'l Bank of Iowa v. W.R. Grace & Co., 999 F.2d 1257, 1262 (8th Cir. 1993), agreed with the Phillips court, holding that "there is clear legal prejudice where a Rule 41(a)(2) dismissal is granted in the face of

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<sup>1</sup>Contrary to plaintiffs' brief, there was no finding by the Rodriguez Court that Wisconsin law applied in that case prior to dismissal. Plaintiffs' attempt to distinguish Rodriguez on the grounds that there was a judicial "guarantee" in that case that Wisconsin law applied is wrong.

a valid statute of limitations defense." This Court's decision in Rodriguez, that dismissal without prejudice is improper where it "could deprive the defendant of a good and valid defense," is therefore supported by the better reasoned decisions in the Fifth and Eight Circuits.<sup>2</sup>

Plaintiffs' reliance on Manshack v. Southwestern Elec. Power Co., 915 F.2d 172 (5th Cir. 1990), is similarly misplaced. The Fifth Circuit's opinion in that case actually endorses the denial of voluntary dismissal requests in cases where forum shopping would change the controlling law. The Fifth Circuit in Manshack upheld the dismissal of a Texas federal action without prejudice in order to allow the plaintiff to refile in a Texas state court, but only because "Texas judges must apply the same choice of law principles." Id. at 175. The forum change therefore resulted in no legal prejudice to the defendant. The court distinguished the facts of that case from the very situation presented in this case, where the dismissal would allow the plaintiff to refile in another state to take advantage of that state's choice of law provisions. Citing this Court's decision in Rodriguez, the Manshak court held: "We endorse the denial of voluntary dismissal if approval could allow a plaintiff to select a different body of law unfavorable to the defendant's position." Id.

There is no question that plaintiffs' forum shopping could cause serious legal prejudice to Fisher in this case. Contrary to Wisconsin law, under Ohio law statutes of limitation are regarded as procedural. Therefore, as plaintiffs are undoubtedly aware, Ohio courts usually apply Ohio statutes of limitation regardless of the choice of substantive law. E.g., Lawson v. Valve-Trol Co., 610 N.E.2d 425, 426 (Ohio Ct. App. 1991) ("In choice-of-law situations, the

---

<sup>2</sup> The only Seventh Circuit decision that addressed this issue, Bolten v. General Motors Corp., 180 F.2d 379 (7th Cir. 1950), was subsequently overturned. See Grivas v. Parmelee Transp. Co., 207 F.2d 334, 336 (7th Cir. 1953); I.R. Adney v. Mississippi Lime Co. of Missouri, 241 F.2d 43, 45-46 (7th Cir. 1957).

procedural laws of the forum state, including applicable statutes of limitations, are generally applied."). Thus, the very real prospect of plaintiffs refiling their state law claims in an Ohio court "could deprive [Fisher] of a good and valid defense under Wisconsin law," resulting in clear legal prejudice to Fisher. Rodriguez, 102 F.R.D. at 106. Plaintiffs' motion, therefore, should be denied.

**B. Dismissal of Plaintiffs' State Law Claims Without Prejudice Will Not Streamline This Litigation For Fisher.**

Plaintiffs' assertion that granting their motion would streamline this litigation is also misleading. Plaintiffs cite cases from the Seventh Circuit and elsewhere in support of their assertion that dismissal of their state law claims without prejudice is "particularly appropriate" in this case. (Pl. Rep. at 2) In each of the cases cited in plaintiffs' Reply, however, the prospect of a second lawsuit was not prejudicial to the defendant because the plaintiff in those cases sought dismissal of the entire action, not merely some of the claims asserted in the action. See American Nat'l Bank and Trust Co. of Sapulpa v. BIC Corp., 931 F.2d 1411 (10th Cir. 1991) (affirming dismissal of entire action under Rule 41(a)(2)); Templeton v. Nedlloyd Lines, 901 F.2d 1273 (5th Cir. 1990) (same). Indeed, in the only Seventh Circuit case cited in plaintiffs' Reply, the court affirmed dismissal of an entire action under Rule 41(a)(2) so that the plaintiff could litigate both "his federal and non-federal claims . . . in state court for reasons of judicial economy." Kovlic v. DEC Int'l, Inc., 855 F.2d 471, 472 (7th Cir. 1988).<sup>3</sup>

---

<sup>3</sup> Surprisingly, plaintiffs now appear to base their Motion for Leave to Amend solely on Rule 41(a)(2). Federal courts have recognized that use of Rule 41(a)(2) to dismiss only a portion of an action is inappropriate. E.g. Ethridge v. Harbor House Restaurant, 861 F.2d 1389, 1392 (9th Cir. 1988) (citing cases); Smith, Kline & French Laboratories v. A.H. Robins Co., 61 F.R.D. 24, 26-30 (E.D. Pa. 1973). Instead, a motion to dismiss only part of an action must be brought under Rule 15. In In re Wyoming Tight Sands Antitrust Litig., 128 F.R.D. 121, 123 (D. Kan. 1989), the court held that the appropriate method for dropping only certain claims in a lawsuit is (continued...)



Contrary to Kovlic, dismissal of plaintiffs' state law claims without prejudice would likely require Fisher to litigate the federal CERCLA claim now in this Court, and the state law claims in an Ohio court at a later date. Requiring Fisher to defend two separate lawsuits based on the same operative facts in two different courts at two different times would neither promote judicial economy nor "streamline" the litigation for Fisher. Accordingly, plaintiffs' Motion for Leave to Amend should be denied.

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<sup>3</sup>(...continued)

through amendment of the complaint under Rule 15. Rather than requiring the plaintiff to file a new motion, the court granted plaintiff's motion "on the condition that the dismissed claims will be subject to the same res judicata effect that they would have received if they had been more appropriately dropped by plaintiffs pursuant to a Rule 15 amended complaint." Id. This Court should likewise grant plaintiffs' motion only with a specific finding that the claims are subject to the same res judicata effect as they would if they were dismissed under Rule 15.

**CONCLUSION**

For the foregoing reasons, and for the reasons set forth in Fisher's Response to Plaintiffs' Motion for Leave to Amend Complaint, this Court should deny plaintiffs' motion or, in the alternative, dismiss plaintiffs' state law claims with prejudice.

Dated: January 10, 1995



One of the attorneys for Defendant  
Fisher Controls International, Inc.

Michael Ash  
GODFREY & KAHN, S.C.  
780 North Water Street  
Milwaukee, Wisconsin 53202  
(414) 273-3500

Andrew R. Running  
Robert B. Ellis  
KIRKLAND & ELLIS  
200 East Randolph Drive  
Chicago, Illinois 60601  
(312) 861-2000

(Inquiries May Be Directed To Mr. Ash.)

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing FISHER CONTROLS  
INTERNATIONAL, INC.'S SURREPLY IN OPPOSITION TO PLAINTIFFS' MOTION  
FOR LEAVE TO AMEND COMPLAINT to be served on the following persons by  
special messenger:

James R. Figliulo  
Carl A. Gigante  
Carmen D. Caruso  
FORAN & SCHULTZ  
30 North LaSalle Street  
Suite 3000  
Chicago, IL 60602

and first-class United States mail postage prepaid to the following:

Richard J. Sankovitz  
Whyte Hirschboeck Dudek, S.C.  
111 East Wisconsin Ave., Suite 2100  
Milwaukee, Wisconsin 53202-4894

Dated: January 10, 1995



Robert B. Ellis



42

### Judge Reynolds

In support of its motion, and as set forth in the accompanying Surreply, plaintiffs' Reply Brief misstates the holdings of several cases that were cited for the first time in their Reply Brief, and cites a minority holding without referring the Court to the majority line of authority. Fisher seeks leave to file this six-page Surreply in order to provide the Court with complete citations, and to correct plaintiffs' misinterpretation of the controlling law.

WHEREFORE, Fisher respectfully requests that its Motion For Leave to file the attached brief Surreply be granted.

Dated: January 10, 1995



One of the attorneys for Defendant  
Fisher Controls International, Inc.

Michael Ash  
GODFREY & KAHN, S.C.  
780 North Water Street  
Milwaukee, Wisconsin 53202  
(414) 273-3500

Andrew R. Running  
Robert B. Ellis  
KIRKLAND & ELLIS  
200 East Randolph Drive  
Chicago, Illinois 60601  
(312) 861-2000

(Inquiries May Be Directed To Mr. Ash.)

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing MOTION FOR LEAVE TO FILE  
SURREPLY IN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO AMEND  
COMPLAINT to be served on the following persons by special messenger:

James R. Figliulo  
Carl A. Gigante  
Carmen D. Caruso  
FORAN & SCHULTZ  
30 North LaSalle Street  
Suite 3000  
Chicago, IL 60602

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Whyte Hirschboeck Dudek, S.C.  
111 East Wisconsin Ave., Suite 2100  
Milwaukee, Wisconsin 53202-4894

Dated: January 10, 1995



Robert B. Ellis

34



73 Dts

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING CO.,  
a Wisconsin corporation,  
SLYMAN INDUSTRIES, INC., a  
Delaware corporation, and  
THERESA A. SLYMAN, an  
individual resident of Ohio,

Plaintiffs,

v.

FISHER CONTROLS INTERNATIONAL,  
INC., a Delaware corporation,

Defendant.

No. 93-C-0325

Judge Reynolds

STIPULATION

The plaintiffs, Milwaukee Die Casting Co., Slyman Industries, Inc. and Theresa A. Slyman, and the defendant, Fisher Controls International, Inc., by their respective attorneys, stipulate as follows:

1. Plaintiffs have designated three expert witnesses: Robert Parsons, Charles Zeal and David Schultz. Defendant has designated one expert witness: James W. Polich. Both sides have stated their intention to depose the other side's expert(s).

2. The Court has previously entered an order setting January 20, 1995 as the general discovery cutoff in this case.

3. The parties agree that, due to the current schedule for deposing non-expert witnesses, it would be impossible to take expert depositions prior to the January 20, 1995 discovery cutoff. Therefore, the parties stipulate to, and hereby request the Court to permit:

(a) the taking of expert depositions after January 20, 1995;  
and

(b) an inspection, including the opportunity to take photographs, after January 20, 1995, by the defendant's designated expert witness, attorneys of record and consulting expert, of the Milwaukee Die Casting Company facility in Milwaukee, Wisconsin.

MILWAUKEE DIE CASTING CO.,  
SLYMAN INDUSTRIES, INC.  
and THERESA A. SLYMAN

By:   
One of Their Attorneys

James R. Figliulo  
Carl A. Gigante  
Carmen D. Caruso  
FORAN & SCHULTZ  
30 North LaSalle Street  
Suite 3000  
Chicago, Illinois 60602  
(312) 368-8330

FISHER CONTROLS INTERNATIONAL,  
INC.

By:   
One of Their Attorneys

Andrew R. Running  
Robert B. Ellis  
KIRKLAND & ELLIS  
200 East Randolph Drive  
Chicago, Illinois 60601  
(312) 861-2000

Michael Ash  
James G. Schweitzer  
GODFREY & KAHN, S.C.  
780 North Water Street  
Milwaukee, Wisconsin 53202  
(414) 273-3500

93

1/31/85

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING CO.,  
SLYMAN INDUSTRIES, INC. and  
THERESA A. SLYMAN

Plaintiffs,

v.

FISHER CONTROLS INTERNATIONAL,  
INC.,

Defendant.

No. 93-C-0325

Judge Reynolds

**PLAINTIFFS' REPLY IN SUPPORT OF  
MOTION FOR LEAVE TO AMEND COMPLAINT**

Plaintiffs, Milwaukee Die Casting Co., Slyman Industries, Inc. and Theresa A. Slyman (collectively "plaintiffs") seek leave to amend their Complaint in order to streamline their case by:

(A) clarifying their claims under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), in particular, their claim for declaratory relief (the proposed amended CERCLA claims are set forth in counts I through III of the proposed amended complaint, amending counts I and II of the original complaint); and

(B) dismissing, without prejudice, their state law claims for breach of contract, negligent misrepresentation, intentional misrepresentation and strict liability for misrepresentation (collectively the "state law claims" as set forth in counts III through VI of the original complaint).

#### THE CERCLA CLAIMS

Defendant, Fisher Controls, Inc. ("Fisher"), has not objected to the filing of the amended CERCLA claims in counts I through III of the proposed amended complaint. Therefore, the proposed amended complaint should be allowed.

#### THE STATE LAW CLAIMS

Fisher objects to the proposed dismissal of the state law claims, without prejudice, but under Fed.R.Civ.P 41, Fisher's objections are without merit:

It has often been said that a dismissal without prejudice should be allowed unless defendant will suffer some prejudice other than the mere prospect of a second suit. That plaintiff may obtain some tactical advantage by dismissal is insufficient ground for denial of the motion; substantial prejudice to the defendant should be the test. Where substantial prejudice is lacking, the district court should exercise its discretion by granting a motion for voluntary dismissal without prejudice.

(5 *Moore's Federal Practice*, ¶41.05 (citations omitted)).

Dismissal without prejudice is particularly appropriate where, as here, state law claims are involved. See, *American Nat'l Bank & Trust Co. v. Bic Corp.*, 931 F.2d 1411 (10th Cir. 1991) (dismissal without prejudice is appropriate where effect of dismissal is to permit litigation of state law claims in state court); *Kovalic v. DEC' Int'l, Inc.*, 855 F.2d 471 (7th Cir. 1988) (loss of right to defend against state law claims in federal forum not clearly prejudicial to defendant); *Templeton v. Nedloyd Lines*, 901 F.2d 1273 (5th Cir. 1990) (relitigation of state law claims in state court was not overly prejudicial).

Fisher's argument that "plaintiffs are considering refiling the same state law claims ... in Ohio, where they believe they would be entitled to a more favorable statute of limitations," is unavailing. (*Fisher's Response*, p. 1). This contention is based on Fisher's erroneous interpretation of a telephone conversation between counsel. In a December 1994 telephone call which Fisher's attorneys discuss in their affidavits, plaintiffs' attorney Carmen D. Caruso stated, in substance, that "*plaintiffs have no present intention to refile the state law claims*, but that they should not be foreclosed, in advance, from refiling those claims if warranted by the evidence." (*See, Affidavit of Carmen D. Caruso*, ¶2, attached hereto).<sup>1</sup>

More importantly, Fisher's premise (that it may be deprived of a statute of limitations defense) is baseless. Fisher is *assuming* that this Court would apply Wisconsin's statute of limitations to the state law claims in this action (and further assuming that its limitations defense would be meritorious under Wisconsin law). However, *no choice-of-law determination* (let alone a ruling on the

---

<sup>1</sup> In this conversation, Mr. Running of Kirkland & Ellis then asserted that the statute of limitations would bar any refiling of the state law claims, to which Mr. Caruso responded that he disagreed with Mr. Running's contention, and that in the hypothetical event of refiling, the state law claims could be refiled in either Wisconsin or Ohio (where the alleged fraud arguably occurred), and where the limitations period would be longer than in Wisconsin. (*Id.*).

In a subsequent conversation, Mr. Caruso reiterated to Fisher's attorneys that plaintiffs have no present intention to refile the state law claims. (*Id.*, ¶3).

merits of the limitations defense) *has been made in this action.*<sup>2</sup>

Even if the Court were to assume that Wisconsin law would apply, and further assume that Fisher's limitations defense would succeed, those assumptions would not justify a dismissal with prejudice:

[t]he likelihood that a dismissal without prejudice will deny the defendant a statute of limitations defense does not constitute plain legal prejudice and hence should not alone preclude such a dismissal.

*McCants v. Ford Motor Co.*, 781 F.2d 855, 858 (11th Cir. 1986).<sup>3</sup>

Fisher's attempt to establish prejudice is a failure. Prior to commencement of the first deposition in this action, plaintiffs had informed Fisher of their intent to amend the complaint and thereby dismiss the state law claims. (*Caruso Aff.*, ¶4). Based on his knowledge that plaintiffs intended to dismiss the state law claims, without prejudice, the defendant's attorney stated that he was modifying his examination of the first witness (and subsequent witnesses, presumably). (*Id.*, ¶5).

---

<sup>2</sup> Even if the Court had already made a choice-of-law ruling, that fact would *not* preclude a dismissal without prejudice. See, *Manshack v. Southwestern Elec. Power Co.*, 915 F.2d 172 (5th Cir. 1990) (although dismissal without prejudice would nullify district court's choice-of-law ruling, this did not constitute clear legal prejudice since the ruling was subject to revision, and the same principles would control if the case was refiled in the state court).

<sup>3</sup> Fisher's citation to *Rodriguez v. Marks Bros. Pickle Co., Inc.*, 102 F.R.D. 104 (E.D. Wis. 1984), is misplaced. In *Rodriguez*, there had already been a judicial "guarantee" that Wisconsin's worker compensation law would govern the action, when plaintiff sought to evade that ruling by dismissing in Wisconsin and re-filing in another state. (p. 108). As set forth above, there has been no comparable ruling in this case.

Further, unlike *Ratkovich v. Smith Kline*, 951 F.2d 155, 158 (7th Cir. 1991)), which Fisher cites, the plaintiffs have stated a reasonable reason for the proposed amendment: Plaintiffs desire to streamline this case by focusing on the CERCLA issues, and to seek a declaratory judgment that Fisher is liable for all necessary response costs. Also, the plaintiffs are in compliance with the Court's scheduling order, and are not guilty of a "lack of diligence ... and perhaps even bad faith". (*Id.*).

Fisher's Motion For Partial Summary Judgment

In an effort to create the impression that it would suffer legal prejudice, Fisher has responded to the motion for leave to amend by filing a motion for partial summary judgment on the state law claims -- but this 'make work' tactic does not demonstrate legal prejudice. Fisher cites *Pace v. Southern Express Co.*, 409 F.2d 331 (7th Cir. 1969), where after the defendant filed a motion for summary judgment, the plaintiff responded by seeking leave to dismiss its entire case, without prejudice. *Pace* is clearly distinct. Here, there was no summary judgment motion on file when plaintiffs sought leave to amend. (As set forth above, depositions had just begun and, in fact, defendant knew prior to starting the first deposition that plaintiffs intended to seek a dismissal without prejudice of the state law claims). This situation is the exact opposite of *Pace*: the plaintiffs here did not file a motion for leave to amend in order to avoid a summary judgment; rather, the defendant has filed an after-the-fact partial summary judgment motion in order to manufacture the appearance of prejudice.



In any event, Fisher would suffer no legal prejudice if, as a result of a dismissal of the state law claims without prejudice, the summary judgment motion is not heard. If the plaintiffs later refile, Fisher would have available all of its claimed defenses, and would also have access to all of the evidence which it obtains in this case. Fisher's motion for partial summary judgment should be disregarded.

#### CONCLUSION

In summary, the plaintiffs should be permitted to file their amended complaint, thereby amending their CERCLA claims.

With respect to the state law claims, plaintiffs have made a reasonable decision to streamline their case, and they should not be punished for that decision. They should not be foreclosed from refiling at a later date -- nor should they be required to defend against an after-the-fact summary judgment motion. Fisher has failed to identify any legal prejudice that would result from the granting of plaintiffs' motion for a dismissal of the state law claims without prejudice, and its objections should be overruled.

WHEREFORE, plaintiffs request the entry of an order granting leave to file the proposed Amended Complaint and dismissing the state law claims without prejudice.

DATED this 5<sup>th</sup> day of January, 1995.

MILWAUKEE DIE CASTING CO., SLYMAN  
INDUSTRIES, INC. and THERESA A.  
SLYMAN

By: Carmen D. Caruso  
One of their attorneys

James R. Figliulo  
Carl A. Gigante  
Carmen D. Caruso  
FORAN & SCHULTZ  
30 North LaSalle Street  
Suite 3000  
Chicago, Illinois 60602  
(312) 368-8330

2. On or about December 9, 1994, I received a telephone call from attorneys Andrew Running and Robert Ellis from Kirkland & Ellis, counsel of record for Fisher Controls International, Inc. In the course of that conversation, Mr. Running questioned why the plaintiffs would not agree to a dismissal of their pending state law claims with prejudice. In substance, I responded that "plaintiffs have no present intention to refile the state law claims, but that they should not be foreclosed, in advance, from refiling those claims if warranted by the evidence." Mr. Running then asserted that the statute of limitations would bar any refiling of the state law claims, to which I responded, in substance, that I disagreed

with Mr. Running's contention(s) concerning the statute of limitations, and that in the hypothetical event of refiling, the state law claims could be refiled in Wisconsin or Ohio (where the alleged fraud arguably occurred), and where the limitations period would be longer than the comparable period in Wisconsin.

3. In a subsequent conversation with Mr. Running and attorney Mike Ash of Godfrey & Kahn, also counsel of record for Fisher, I repeated that plaintiffs had no current plan to re-file their state law claims in any jurisdiction, but were merely attempting to preserve their right to re-file if later warranted. This conversation occurred during a break in a deposition at Mr. Ash's office on or about December 15, 1994.

4. The first deposition in this case was taken by Mr. Running on or about November 9, 1994. The witness was attorney Robert Glaser, who had represented the Slyman family and their interests in their 1982 acquisition of Milwaukee Die Casting Co. About one week prior to that deposition, I advised Mr. Running, by telephone, that plaintiffs were considering an amendment to their complaint that would remove the state law claims from this case. On the morning of November 9, 1994, before Mr. Glaser's deposition began, I told Mr. Running, in person, that plaintiffs would, indeed, be filing a motion for leave to amend which would remove the state law claims from this case. Counsel then confirmed this conversation on-the-record during Mr. Glaser's deposition:

MR. RUNNING: Mr. Caruso, I don't know if you're willing to state this on record [o]r not of our conversation today about amending the complaint. I don't see any need to pursue this subject in light of that conversation.

MR. CARUSO: We intend to move voluntarily to dismiss, without prejudice, the common law claims previously alleged in the complaint for breach of contract and fraud.

MR. RUNNING: Well, without addressing the without prejudice part, at this point I don't think I'm going to pursue questions regarding number 13.

(Tr., Glaser dep., p. 203, copy attached hereto).

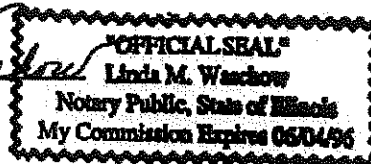
5. Thus, prior to commencement of the first deposition in this case, counsel for Fisher knew that plaintiffs intended to dismiss the state law claims from this case (without prejudice), and, based on that knowledge, he modified his examination of the witness.

DATED this 5th day of January, 1995.

  
Carmen D. Caruso

SUBSCRIBED and SWORN to before me  
this 5th day of January, 1995.

  
NOTARY PUBLIC



1                   IN THE UNITED STATES DISTRICT COURT  
2                   EASTERN DISTRICT OF WISCONSIN  
3       MILWAUKEE DIE CASTING CO.,  
4       SLYMAN INDUSTRIES, INC.  
5       and THERESA A. SLYMAN,  
6                   Plaintiffs,  
7               vs.   Case No.  
8       FISHER CONTROLS                                       93 C 0325  
9       INTERNATIONAL, INC.,  
10                  Defendant.

11                                       - - - - -  
12               Deposition of ROBERT E. GLASER, a  
13       Witness called by the Defendant for examination  
14       under the Applicable Rules of Federal Civil  
15       Procedure, taken before me, Steven H. Henschel, a  
16       Registered Professional Reporter and Notary  
17       Public in and for the State of Ohio, pursuant to  
18       notice and stipulations of counsel, at the  
19       offices of Arter & Hadden, 1100 Huntington  
20       Building, Cleveland, Ohio, on Wednesday, November  
21       9, 1994, at 10:00 o'clock a.m.

22                                       - - - - -  
23  
24  
25   COPY

1           A.     This is a letter, a copy of a letter  
2     from me to Mr. Auer which advises with regard to  
3     the status as of that time of the Environmental  
4     Protection Agency consent agreement.

5           Q.     Does it provide legal advice on that  
6     matter?

7           A.     Yes.

8           MR. RUNNING: Mr. Caruso, I don't  
9     know if you're willing to state this on record to  
10    not of our conversation today about amending the  
11    complaint. I don't see any need to pursue the  
12    subject in light of that conversation.

13          MR. CARUSO: We intend to move  
14    voluntarily to dismiss, without prejudice, the  
15    common law claims previously alleged in the  
16    complaint for breach of contract and fraud.

17          MR. RUNNING: Well, without  
18    addressing the without prejudice part, at this  
19    point I don't think I'm going to pursue questions  
20    regarding number 13.

21          Q.     Number 14?

22          A.     14 is a September 28, 1992 memorandum  
23    from Mock to me discussing the advice that we had  
24    previously given to Milwaukee Die.

25          MR. RUNNING: What privilege is being





1/5/95  
JMF

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING CO.,  
et al.,

Plaintiffs,

v.

FISHER CONTROLS INTERNATIONAL,  
INC.,

Defendant.

No. 93-C-0325

Judge Reynolds

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on January 6, 1995, we will file with the Clerk of the United States District Court, Eastern District of Wisconsin, Historic Federal Courthouse, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202-4583, PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR LEAVE TO AMEND COMPLAINT, a copy of which is attached hereto.

MILWAUKEE DIE CASTING CO., SLYMAN  
INDUSTRIES, INC. and THERESA A.  
SLYMAN

By: 

One of Their Attorneys

James R. Figliulo  
Carl A. Gigante  
Carmen D. Caruso  
FORAN & SCHULTZ  
30 North LaSalle Street  
Suite 3000  
Chicago, Illinois 60602  
(312) 368-8330

**SERVICE LIST**

**Michael Ash  
James G. Schweitzer  
GODFREY & KAHN, S.C.  
780 North Water Street  
Milwaukee, Wisconsin 53202**

**Andrew R. Running  
Robert B. Ellis  
KIRKLAND & ELLIS  
200 East Randolph Drive  
Chicago, Illinois 60601**

CERTIFICATE OF SERVICE

The undersigned states on oath, that she caused a copy of below named pleading to be served upon the attorneys named on the attached Service List at their respective addresses as indicated on January 5, 1995.

**PLAINTIFFS' REPLY IN SUPPORT OF  
MOTION FOR LEAVE TO AMEND COMPLAINT**

By Mail:

Michael Ash  
James G. Schweitzer  
GODFREY & KAHN, S.C.  
780 North Water Street  
Milwaukee, Wisconsin 53202

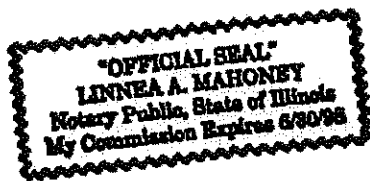
By Messenger:

Andrew R. Running  
Robert B. Ellis  
KIRKLAND & ELLIS  
200 East Randolph Drive  
Chicago, Illinois 60601

  
Linda M. Waschow

SUBSCRIBED and SWORN to before  
me this 5th day of January, 1995.

  
NOTARY PUBLIC



37

15 16 17

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

**MILWAUKEE DIE  
CASTING CO. et al,**

**Plaintiffs,**

**v.**

**FISHER CONTROLS  
INTERNATIONAL, INC.**

**Defendant.**

**No. 93-C-0325**

**Judge Reynolds**

**FISHER CONTROLS INTERNATIONAL, INC.'S MEMORANDUM  
IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs' state law claims for breach of contract and misrepresentation are barred by the applicable Wisconsin Statutes of Limitations. Each state law claim is subject to a six-year statute of limitation under Wisconsin law. Each claim, however, accrued more than nine years before the 1993 filing of this action.

Accordingly, plaintiffs' state law claims are time-barred and summary judgment on these claims should be entered for Fisher.

**STATEMENT OF UNDISPUTED FACTS**

1. Milwaukee Die Casting Co. (MDCC) obtained title to the property at 4132 N. Holton Street in Milwaukee on December 23, 1929. An occupancy permit for a new 44,000-square-foot die casting factory at that address was issued by the City of Milwaukee in June 1952. Fisher acquired the common stock of MDCC on January 13, 1975.

2. PCB-based hydraulic fluid was used in the die casting machines and trim presses at the MDCC plant until 1981, when the fluid was drained and flushed from the hydraulic

lines and other equipment and replaced with an alternative product. On December 15, 1981, an independent environmental engineering firm took 32 PCB samples from plant equipment that had previously contained PCB-based hydraulic fluid. All of the samples were found to be below the permissible 50 parts per million ("ppm") level established by federal regulations. (MDC 185; 40 CFR § 761.30(e))

3. Fisher began negotiating the possible sale of the common stock of MDCC with George Slyman and Slyman Enterprises Inc. in approximately October 1981. On December 10, 1981, George Slyman wrote Fisher outlining an offer to buy MDCC for \$4.5 million. For tax reasons, George Slyman proposed that Fisher acquire title to MDCC's real property, and that the real property then be sold to Theresa Slyman, George's wife, in a separate transaction from the sale of MDCC's stock to one of George's companies, Slyman Industries. Fisher accepted Slyman's proposal on December 14, 1981, subject to the negotiation of formal sale agreements. To accommodate Slyman's initial request that the closing of the sale be effective as of December 31, 1981, MDCC's board of directors authorized a dividend of MDCC's real property to Fisher on December 22, 1981. The warranty deeds from MDCC to Fisher were executed on December 24, 1981.

4. On January 7, 1982, U.S. EPA issued an administrative complaint against MDCC for PCB regulatory violations observed during a plant inspection that had occurred almost two years earlier, on April 21, 1980. The complaint alleged that at the time of the 1980 inspection, the plant had failed: (1) to test its die casting machines for PCBs; (2) to store properly absorbent material, die cooling water and waste oils; and, (3) to mark its die casting machines with the required PCB label. (See Appendix Tab A) MDCC, through counsel retained by Fisher, responded to the EPA complaint by informing the Agency that the PCB hydraulic fluid had been

removed from the machines and disposed of properly by Rollins Environmental Services between the time of the April 1980 inspection and the previously described December 1981 verification sampling. (Appendix Tab B) The regulatory violations identified by EPA during the April 21, 1980 inspection were resolved in a July 26, 1983 Consent Agreement, in which MDCC agreed to pay a \$1,500.00 fine. (Appendix Tab C)

5. Slyman's lawyer in the negotiation of his purchase of MDCC, Robert Glaser, prepared on January 28, 1982 a proposed indemnification section relating to potential PCB contamination of the MDCC facility. Slyman's draft indemnification language confirms he was informed about the January 7, 1982 EPA administrative complaint, as well as prior 1975 DNR correspondence concerning the detection of PCBs in the plant sewer. (Appendix Tab D) Slyman characterized these regulatory citations as evidence that the "machinery and equipment and sewer system" were "contaminated" with PCBs:

The alleged violations arise out of the Company's use of materials containing PCBs which contaminated the machinery and equipment and sewer system.

(Tab D, p. MDC 137)

6. The "Purchase Agreement - Common Shares" between Fisher and Slyman Enterprises, Inc. was executed on February 23, 1982. (Appendix Tab E) In that agreement, Fisher sold its shares of stock in MDCC to Slyman Enterprises. Fisher's future liability, if any, to the buyer for PCBs at the MDCC facility was defined in § 14 of the Agreement. (Id.) After reciting the subject matters of the January 7, 1982 EPA complaint and the 1975 DNR correspondence, the Agreement made Fisher responsible for violations "of any law, rule or regulation in existence on the closing arising out of the use by [MDCC] of PCBs prior to the closing . . . ." (Id.) Fisher also indemnified Slyman Enterprises for "[n]ecessary decontamination

and inspection costs" required by "laws or governmental regulations in effect as of the closing," provided the required costs were "incurred as a result of the use by [MDCC] of PCBs prior to the closing . . .," and provided further that Slyman Industries first consult with Fisher before incurring any decontamination costs in excess of \$12,000. (Id.) Fisher's indemnification obligations terminated "on December 31, 1989 as to die casting machines and on December 31, 1989 as to other property except for claims asserted by Buyer in writing prior to such dates." (Id.)

7. As noted, Slyman's offer to purchase MDCC was contingent upon Fisher obtaining title to MDCC's real property, so that Fisher could sell it directly to Theresa Slyman in order to minimize the Slymans' tax liabilities. Accordingly, Fisher sold MDCC's real property to Theresa Slyman on an "AS IS" basis, pursuant to a separate "Purchase Agreement," also dated February 23, 1982. (Appendix Tab F)

8. After the February 23, 1982 closing of the sale of MDCC to the Slymans, MDCC changed its name for a period of time to Accurate Die Casting Company. Since the Slymans later changed the company's name back to Milwaukee Die Casting Co., we will refer to the company by that name to avoid confusion.

9. On or shortly after December 23, 1983, Donohue Analytical, Inc. sent MDCC a three-page laboratory report on 37 PCB samples taken at the MDCC plant. All of the results for the die casting machines and trim presses were below the Federal standard of 50 ppm. However, the report disclosed the presence of PCBs at concentrations ranging from 75 ppm to 2,800 ppm in four "areas" of the plant, as well as the presence of 55 ppm of PCBs in a sewer below a die casting machine. A hand-drawn diagram plotting additional PCB test results, some of which were also over 50 ppm, was attached. (Appendix Tab G)



10. On February 1, 1984, Robert Glaser, the same lawyer who drafted the Purchase Agreement - Common Shares for the Slymans, wrote to Fisher giving formal notice of Slyman Industries' claim for indemnification for future PCB testing and cleanup costs at the MDCC facility. (Appendix Tab H) Citing the December 23, 1983 Donohue Analytical Laboratory report, Slyman claimed there were 13 areas known to be of concern based on the PCB test results obtained to date:

This report indicates there are 13 areas of concern. On the third page, lab number 9553 relates to the testing of a sewer under machine 21 and lab numbers 9519-22 are the results of samples taken from the soil at the facility immediately behind the factory.

(Id.) In addition, Slyman advised Fisher that it had ordered 12 more PCB tests to be taken based on the December 1983 test results and reports from employees of hydraulic oil dumping that had occurred "years ago":

We are told by employees that years ago oil from the machines was dumped at the facility behind the factory. In view of these positive results, 12 more tests have been ordered at other outside areas of the facility.

(Id.)

11. Slyman did not limit his February 1, 1984 demand letter to the alleged costs of cleaning up the PCBs identified in the testing performed to date. Instead, the letter demanded indemnification for the costs of testing and cleaning up PCBs wherever they were found at the facility:

... we do not intend to limit this notice to the report included herewith. We do include any area of PCB's at the facility, including but not limited to the contents of the machines and presses, any pit holes, reservoirs or spills under the machines, the capped sewer between the plant and the Milwaukee River and such other parts of the premises used by the Company.

(Id.)

12. The test results and other attachments to the February 1, 1984 demand letter were not included in the envelope sent to Fisher. At Fisher's request, Glaser's law partner, Clay Mock, sent a follow-up letter on February 9, 1984 enclosing the missing December 1983 test results. Mock repeated Slyman's demand that Fisher "undertake to clean up those identified areas of concern or acknowledge that it will reimburse Slyman Industries, Inc. and/or Accurate Die Casting Company for the costs to be incurred." (Appendix Tab I)

13. Fisher responded, through its counsel, to Clay Mock's letter on February 17, 1984. Noting that the demand letter had failed to identify any hazard to health or the environment, or any legal violation, Fisher requested that Slyman Industries provide detailed information as to the basis for their stated PCB concerns, "and the reasons why it is felt that any additional action should be taken." (Appendix Tab J)

14. Fisher received no further correspondence from the Slymans on the subject of the alleged PCB contamination of the MDCC facility for the next seven years and eight months, until November 4, 1991.

15. Plaintiffs filed their present lawsuit against Fisher on April 12, 1993, and served it on August 2, 1993.

**1. Plaintiffs' Claim For Breach Of Contract Is Barred By Wisconsin's Six Year Statute Of Limitations For Contract Actions.**

Section 893.43 of the Wisconsin Statutes provides:

An action upon any contract, obligation or liability, express or implied, including an action to recover fees for professional services, except those mentioned in § 893.40, shall be commenced within 6 years after the cause of action accrues or be barred.

A cause of action accrues when "there exists a claim capable of present enforcement, a suable party against whom it may be enforced, and a party who has a present right to enforce it."

Hennekens v. Hoerl, 465 N.W.2d 812, 815 (Wis. 1991). Further, Wisconsin courts have long recognized that the statute of limitations for a breach of contract action begins to run at the moment the alleged breach occurs, not upon its discovery by the plaintiffs. Indeed, in CLL Assoc. Ltd. Partnership v. Arrowhead Pacific Corp., 497 N.W.2d 115, 117 (Wis. 1993), the Wisconsin Supreme Court recently observed:

In Wisconsin, a 90-year line of precedent holds that in an action for breach of contract, the cause of action accrues and the statute of limitations begins to run from the moment the breach occurs. This is true whether or not the facts of the breach are known by the party having the right to the action.

See also Borgen v. Economy Preferred Ins. Co., 500 N.W.2d 419, 421 (Wis. Ct. App. 1993).

Plaintiffs' breach of contract claim therefore accrued on February 23, 1982, the closing date of the Slyman acquisition. Even if a discovery rule were applied to this contract claim, plaintiffs' cause of action would accrue no later than February 1, 1984, the day their counsel wrote to Fisher demanding that Fisher indemnify Slyman Industries for PCB testing and cleanup costs at the MDCC facility. Glaser's letter states: "This Notice is given to you at this time to give you notice of and assert claims under Sections 14 and 8 of the Agreement described." (Appendix Tab H) (emphasis added). The February 1, 1984 letter further claims "there was a violation of law and regulations in existence on the date of the closing" arising out of MDCC's use of PCBs, and demands that Fisher "undertake to clear and resolve any such violations and any personal injury claims which may arise from such use." (Id.) Glaser's letter did not limit its demand to alleged contaminated discovered as of that date:

[W]e do not intend to limit this notice to the report included herewith. We do include any area of PCB's at the facility, including but not limited to the contents of the machines and presses, any pit holes, reservoirs or spills under the machines, the capped sewer between the plant and the Milwaukee River and such other parts of the premises used by the Company.

Id.

Deposition testimony of Clay Mock, a law partner of Mr. Glaser who also represented plaintiffs in the acquisition of MDCC, confirm that plaintiffs' state law claims accrued, at the latest, on February 1, 1984. Mr. Mock testified that the February 1 letter was intended to put Fisher on notice of claims "that could go into litigation":

Q: It was your understanding this claim was in litigation at the time?

A: A claim that was going to be in litigation and the claim is made, we had to make it within the certain length of time by reason of the contract and I had done that. So we were putting him on notice of a claim that could go into litigation

(Mock Dep. at 44) (Appendix Tab K)

Mock's deposition testimony also make clear that the February 1 letter was intended to put Fisher on notice as to all potential claims arising out of any alleged PCB problems at the property.

Q: And you were making this clear in this notice that whether or not a test had been taken in a given location, the potential for contamination at that location was to be included within the notice?

A: It was a broad notice to put the recipient on watch that claims could be made.

\* \* \*

Q: And the claim covered every inch [of] the property of the Milwaukee Die Casting Company plant?

A: It was broad enough to include such things as may yet [be] found upon a detailed discovery.

(Mock Dep. at 14, 44) (Appendix Tab K)

Glaser's demand letter to Fisher demonstrates that any claim plaintiffs may have had for breach of contract against Fisher was "capable of enforcement" on February 1, 1984, and

therefore Fisher's breach of contract action accrued more than nine years prior to the time that plaintiffs filed this action. Thus, plaintiffs' breach of contract claim against Fisher is time-barred.

**2. Plaintiffs' Claims For Negligent Misrepresentation and Strict Liability Misrepresentation Are Barred By Wisconsin's Six Year Statute Of Limitations For Actions Claiming Damage To Real Property.**

Plaintiffs' state law claims for negligent and strict liability misrepresentation also are barred by Wisconsin's six year statute of limitations applicable to actions for damage to real property. Section 893.52 of the Wisconsin Statutes provides:

An action, not arising on contract, to recover damages for an injury to real or personal property shall be commenced within 6 years after the cause of action accrues or be barred, except in the case where a different period is expressly prescribed.

Under Wisconsin's discovery rule, a cause of action for damage to real property accrues "on the date the injury is discovered or with reasonable diligence should be discovered, whichever occurs first." Stroh Die Casting Co., Inc. v. Monsanto Co., 502 N.W.2d 132, 136 (Wis. Ct. App. 1993).

A cause of action is deemed discovered for statute of limitations purposes "when all of the elements of an enforceable claims are known to a claimant, . . . [including] knowledge of the identity of the defendant." Id. at 136 n.5; see also Milwaukee Area Vocational Tech. and Adult Ed. Dist. v. United States Steel Corp., 847 F.2d 435, 439-40 (7th Cir. 1988) (applying Wisconsin law: Limitations period runs when "there is some notice of the injury and of a causal connection between the injury and the defendant . . ."). Further, plaintiffs must exercise diligence in discovering any claims: "[P]laintiffs may not close their eyes to information, which through the exercise of reasonable business practice is accessible to them and which if uncovered would alert them to injury." Stroh Die Casting, 502 N.W.2d at 141. Indeed, courts have made it clear that "the discovery rule is an objective standard that does not protect those plaintiffs who sleep on their rights." Milwaukee Area Vocational, 847 F.2d at 440.

In Stroh Die Casting, the court held that summary judgment in favor of the manufacturer of PCBs used at a die casting facility was appropriate on statute of limitations grounds. The court held that the cause of action accrued more than six years prior to the commencement of the lawsuit because compliance with applicable state and federal regulations relating to PCBs would have put plaintiff on notice of its potential claims: "If Stroh had complied with the state and federal regulations regarding PCBs, there is no doubt that it would have discovered its injury prior to [the relevant date]." Stroh Die Casting, 502 N.W.2d at 140.

In this case, plaintiffs' claims for negligent and strict liability misrepresentation accrued, if at all, no later than February 1, 1984, the date of Glaser's demand letter to Fisher. On or before that day, Fisher was fully informed as to the results of their environmental consultants' tests which allegedly showed 13 "areas of concern" relating to PCBs. (Appendix Tab H) Plaintiffs also recognized that other future damages relating to PCBs may occur: "[W]e do not intend to limit this notice to the report included herewith. We do include any area of PCB's at the facility . . . ." (Id.) Further, the deposition testimony of Clack Mock confirms that the February 1 letter has put Fisher on notice of "a claim that could go into litigation" and was "a broad notice to put the recipient on notice that claims could be made." (Mock Dep. at 14, 44) (Appendix Tab K)

Also, like the plaintiff in Stroh Die Casting, plaintiffs in this case were on notice, though state and federal regulations, of its "injuries" associated with the alleged PCB contamination prior to February 1. Indeed, Glaser's February 1 letter mentions some of these regulations by name:

[W]e refer you to the Toxic Substances Control Act, 15 U.S.C. § 261 et seq., The Federal Water Pollution Control Act (Clean Water Act), as amended 33 U.S.C. § 1321 et seq., Resource Conservation [sic] and Recovery Act, 42 U.S.C. § 6901 et seq. and similar statutes of the State of Wisconsin.

(Appendix Tab H) Plaintiffs unquestionably "discovered" any claims they had against Fisher relating to use of PCBs at the Milwaukee Diecasting facility no later than February 1, 1984. Accordingly, plaintiffs' claims against Fisher, which were brought long after the six year limitations period, are barred.

**3. Plaintiffs' Fraud Claim Is Barred By Wisconsin's Six Year Statute Of Limitations Applicable To Fraud Claims**

Plaintiffs' fraud claims are likewise barred by the statute of limitations. Section 893.93(1)(b) of the Wisconsin Statutes provides for a six year statute of limitations for fraud actions. Section 893.93(1)(b) further provides: "The cause of action in such a case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud." Wisconsin courts interpreting this provision have held that "it is not necessary that a defrauded party have knowledge of the ultimate fact of fraud. What is required is that [the plaintiff be in possession of such essential facts as will, if diligently investigated, disclose the fraud." Stroh Die Casting, 502 N.W.2d at 142; see also Milwaukee Western Bank v. A.A. Lienemann, 112 N.W.2d 190, 192 (Wis. 1961).

Like their claims for negligent and strict liability misrepresentation, plaintiffs had knowledge of the facts constituting the alleged fraud no later than February 1, 1984. Plaintiffs complaint alleges that Fisher intentionally misrepresented the condition of the property, specifically the alleged presence of PCB contamination on the property. The February 1, 1984 letter from Glaser to Fisher irrefutably shows, however, that plaintiffs knew of any alleged PCB contamination in 1984. Clay Mock's deposition confirm this.

Indeed, the February 1, 1984 letter demands that Fisher "undertake to clear and resolve" any violations of law regarding PCBs at the Milwaukee Die Casting facility. (Appendix Tab H) Thus, plaintiffs had knowledge of the facts necessary to discover Fisher's alleged fraud

no later than February 1, 1984. Because plaintiffs did not file this action until April of 1993, plaintiffs' fraud claim is time-barred.

Dated: December 22, 1994

Respectfully submitted,



One of the Attorneys for  
Defendant Fisher Controls  
International, Inc.

Michael Ash  
James G. Schweitzer  
GODFREY & KAHN, S.C.  
780 North Water Street  
Milwaukee, Wisconsin 53202  
(414) 273-3500

Andrew R. Running  
Robert B. Ellis  
KIRKLAND & ELLIS  
200 East Randolph Drive  
Chicago, Illinois 60601  
(312) 861-2000

Of Counsel:

Michael K. Shannon, Esq.  
Corporate Counsel  
Fisher Controls International, Inc.  
8000 Maryland Avenue  
P. O. Box 14755  
St. Louis, Missouri 63178



**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing FISHER CONTROLS  
INTERNATIONAL, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR  
PARTIAL SUMMARY JUDGMENT to be served on the following persons by first-class,  
postage prepaid, U.S. mail:

James J. Figliulo, Esq.  
Carl A. Gigante, Esq.  
Carmen D. Caruso, Esq.  
Foran & Schultz  
30 North La Salle Street  
Suite 3000  
Chicago, Illinois 60602

Richard J. Sankovitz, Esq.  
Whyte Hirschboeck Dudek, S.C.  
111 East Wisconsin Avenue  
Suite 2100  
Milwaukee, Wisconsin 53202



DATED: December 22, 1994

A



STATE OF NEW YORK  
COUNTY OF NEW YORK  
JULY 14 1908  
RECORDED



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION V  
230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF:

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

SEWHME

**JAN 7 1982**

*Received  
later*

Mr. John C. Wheeler  
Executive Vice President  
Milwaukee Die Casting Company  
4132 North Holton Street  
Milwaukee, Wisconsin 53212

Re: TSCA Complaint and Notice  
of Opportunity For Hearing  
Docket No. TSCA-V-C-  
Milwaukee Die Casting Co.  
Milwaukee, Wisconsin

Dear Mr. Wheeler

Enclosed please find a Complaint and Notice of Opportunity for Hearing concerning violations of the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., discovered by EPA inspectors at the above captioned facility.

It is recommended that the enclosed Complaint and Rules of Practice, 40 C.F.R. Part 22, be carefully read and analyzed to determine the alternatives available in responding to the alleged violations, proposed penalties, and opportunity for a hearing. Please note that each day the violations cited herein continue constitutes a new violation for which additional penalties may be imposed.

Regardless of whether you choose to request a hearing within the prescribed time limit of fifteen (15) days following service of this Complaint, you are extended an opportunity to request an informal settlement conference.

To request a conference, please write to Mr. Eric P. Dunham, Attorney, Enforcement Division, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, or telephone him at (312) 353-2094.

Failure to respond to this Complaint and Notice of Opportunity for Hearing by specific answer within 15 days of your receipt of this Complaint constitutes your admission of the allegations made in the Complaint.

MDC 000337

-2-

Such failure shall result in the issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Very truly yours,

  
Sandra S. Gardebring  
Director, Enforcement Division

MDC 000338

ENVIRONMENTAL PROTECTION AGENCY

REGION V

IN RE:

MILWAUKEE DIE CASTING COMPANY,

a Delaware Corporation  
Respondent

TSCA-V-C-

COMPLAINT AND NOTICE  
OF OPPORTUNITY FOR  
HEARING

COMPLAINT

This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act (hereinafter "TSCA"), 15 U.S.C. §2615(a). The Complainant is the Director, Enforcement Division, Region V, United States Environmental Protection Agency (hereinafter "U.S. EPA"). The Respondent is Milwaukee Die Casting Company, Inc., which is and at all times referred to in this Complaint was a corporation incorporated under the laws of the State of Delaware and has maintained a place of business at 4132 North Holton Street, Milwaukee, Wisconsin 53212.

This complaint serves as notice of the Director's preliminary determination that Respondent has violated federal regulations addressing the manufacture use, and disposal of polychlorinated biphenyl (PCB), 40 C.F.R. Part 761, promulgated under Section 6 of TSCA, and thereby has violated Section 15 of TSCA, 15 U.S.C. §2614, as follows:

COUNT 1

1. At the time of inspection of the above named facility on April 21, 1980, Respondent maintained in service 13 die casting machines.
2. Federal Regulations require that each person who owns a hydraulic system that ever contained PCBs must test for the concentration of PCBs in the hydraulic fluid of each system no later than November 1, 1979, and at least annually thereafter. 40 CFR §761.31(e)(1).

HDC 000339

3. At the time of the inspection of the above named facility, eleven of Respondent's thirteen machines contained 3,300 gallons of hydraulic fluid having PCB concentrations in excess of 50 ppm. None of the thirteen machines had been tested as required by 40 CFR §761.31(e)(1) thus rendering Respondent in violation of 40 CFR Part 761 and Section 15 TSCA, 15 U.S.C. §2614.

COUNT 2

1. At the time of the inspection of the above named facility Respondent indicated that leakage from die casting machines were cleaned up with absorbent material and disposed of daily. Analytical results of hydraulic fluid contained in absorbent material indicated PCB contamination in excess of 50 ppm.
2. At the time of the inspection of the above named facility, die cooling water and waste oils were stored in 1,000 gallon storage tanks. Analytical results indicate PCB contamination of the waste oil mixture in excess of 50 ppm.
3. Federal regulations require that each owner or operator of a facility used for the storage or disposal of PCBs and PCB Items designated for disposal shall be stored in an area that meet the requirements of 40 CFR §761.42(b).
4. At the time of the inspection of the above named facility, Respondent failed to properly store PCBs and PCB Items as required by 40 CFR §761.42(b), and thereby was in violation of 761 and Section 15 of TSCA, 40 CFR Part 15 U.S.C. §2614.

COUNT 3

MDC 000340

1. At the time of the inspection of the above named facility Respondent maintained in service thirteen aluminum die casting machines. Analytical results indicate that eleven of the thirteen machines containing 3,300

gal of hydraulic fluid have PCB residues concentrations in excess of 50 ppm.

2. The eleven die casting machines referred to in 1 above are "PCB Items" within the meaning of 40 CFR §761.2.
3. Federal Regulations require that PCB Items containing PCBs in concentrations of 50 to 500 ppm shall be marked as required by 40 CFR §761.20 (e).
4. At the time of the inspection of the above named facility, the eleven PCB Items were not marked as required by 40 CFR §761.20 and thereby was in violation of 40 CFR Part 761 and Section 15 of TSCA, 15 U.S.C §2614.

## II

### PROPOSED CIVIL PENALTY

Section 16 of TSCA, 15 U.S.C. §2615, and the regulations promulgated thereunder, 40 CFR 22 (attached), authorize a civil penalty of up to \$25,000 per day for each violation of the Act. Based on the facts given in I above, and on the nature, circumstances, extent and gravity of the above-cited violation, as well as the Respondent's ability to pay, effect on ability to continue to do business, history of prior violations and degree of culpability, the following penalties are hereby proposed for the following violations.

#### COUNT 1

15 U.S.C. §2614(1)  
40 CFR §761.31(e)

failure to test hydraulic fluids . . . 20,000

#### COUNT 2

15 U.S.C. §2614  
40 CFR 761.42(b)

Improper storage of PCB

1,500

HDC 000341

15 U.S.C. 2614(1)  
40 CFR 761.20(e)

failure to mark PCB items  
containing PCB contamination in  
excess of 50 ppm . . .

15,000

total \$36,000

Payment of this penalty may be made by cashier's check payable  
to the United States of America, and remitted to:

Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region V  
230 South Dearborn Street  
Chicago, Illinois 60604

### III

#### OPPORTUNITY TO REQUEST A HEARING

As provided at TSCA Section 16(a), and in accordance with the Administrative Procedure Act (5 U.S.C. 552 et seq.), you have the right to request a hearing regarding the proposed Order, to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty. If you wish to avoid being found in default, you must file a request for hearing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, within fifteen (15) days of service of this Complaint. A written answer must be made, which answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge as to particular factual allegations in the Complaint. The answer shall also state:

1. The circumstances or arguments which are alleged to constitute the grounds of defense;


MOC 000342



2. The facts which Respondent intends to place at issue. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations.

Any hearing that you request will be held and conducted in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 552 et. seq.) and the "Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties or the Revocation or Suspension of Permits" (40 CFR Part 22), a copy of which accompanies this Complaint.

If you fail to file a written answer and request for a hearing within fifteen (15) days of service of this Complaint, such failure constitutes a binding admission of any allegations made in the Complaint and a waiver of your right to a hearing under TSCA. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalty proposed herein shall become due and payable without further proceedings. Such Default Order is not subject to review in any court.

  
Sandra S. Gardebring  
Director, Enforcement Division  
Environmental Protection Agency  
Protection Agency  
Region V

MDC 000343

B

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 01-14-00 BY 60322/UC/STP

**PHOCION S. PARK**  
**ATTORNEY AT LAW**  
800 NORTH LINCOLN BOULEVARD  
St. Louis, Missouri 63106

June 7, 1982

Eric P. Dunham, Esq.  
U. S. Environmental Protection Agency  
Region V  
230 South Dearborn Street  
Chicago, Illinois 60604

Re: TSCA Complaint  
Milwaukee Die Casting Company

Dear Mr. Dunham:

In accordance with our telephone conference on May 20, 1982, concerning the above referenced matter, I have obtained additional information with respect to the handling of fluids containing PCB by Milwaukee Die Casting Company. This information confirms the statement made in my February 12, 1982, letter to you, that any violation of the PCB regulations by Milwaukee resulted from a good faith misunderstanding concerning the use and disposal rules, and that, after the rules had been clarified, Milwaukee moved promptly to bring its operations into full compliance.

The following documents and information are herewith provided to you.

1. Copies of State of Wisconsin Hazardous Waste Manifest Forms pursuant to which PCB-contaminated material was transported to the Deer Park, Texas facility of Rollins Environmental Services (TX) Inc.
2. Copies of State of Texas Waste Shipping-Control Tickets pursuant to which the PCB material was transported to Rollins' Deer Park, Texas facility.
3. Copies of invoices issued by Rollins pursuant to which PCB material was transported to, and incinerated at, Rollins' Deer Park, Texas facility.
4. Beginning in the early 1970's, all replenishing of fluid in the machines was performed using a non-PCB fluid. This substantially reduced the PCB concentration in the fluid by the time of the inspection in 1980. Subsequent to the inspection, the PCB-containing fluid was drained from the machines and replaced with fluid which did not contain PCB.

MDC 000307

Eric P. D. Ham, Esq.  
June 7, 1982  
Page Two

This draining and refilling occurred several times until, by the end of 1981, the PCB content of the fluid in all machines was well below 50 ppm.

Copies of laboratory analyses showing the PCB content of the fluid in various machines on different dates are attached. Also attached are sheets entitled "Machine PCB Control Form," which can be used to relate a given analysis to the machine from which the sample analyzed was taken. The numbers in red on the Control Form and the laboratory analyses relate specific analyses to specific machines. (Please do not be misled by an apparent oddity on the Control Form. For machines Nos. 15, 17, 24 and 25, the column headed "Water Gylcol" shows a concentration of PCB for 7/15/80 that is lower than the concentration shown in the column headed "Pydraul" for 9/18/80. This occurs because the samples dated 9/18/80 were taken from fluid which had been removed from the machines at an earlier date, and stored in drums. The analyses dated 7/15/80 show the PCB content of samples taken from the fluid in the machines after they had been drained and refilled with non-PCB fluid.)

5. Prior to disposal, PCB contaminated material was stored in drums which were, in turn, placed in large metal water troughs. The volume of each trough was greater than the total volume of all the drums placed therein. These water troughs, with drums, were located in a corner of a roofed building set aside for that purpose. A copy of a plan view of this portion of the building showing the "PCB Control Storage Area" is attached for your information.
6. The 11 machines which had shown a PCB concentration in the fluid in excess of 50 ppm were marked with a large yellow label with black printing, approximately six inches by six inches, with a legend beginning "CAUTION CONTAINS PCBS (Polychlorinated Biphenyls)" and containing a legend similar to that of the attached example.

I sincerely trust that the information provided above and documents attached provide a sufficient basis for elimination or, at least, substantial reduction of the \$36,000 fine previously proposed in this matter.

Yours very truly,

Phocion S. Park

Jf

Enclosures

bcc: E. Suess

MDC 000308

C:



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION V

230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF

SEP 1 - 1973

Mr. Phocion S. Park  
Attorney at Law  
800 North Lindbergh Boulevard  
St. Louis, Missouri 63166

Re: Milwaukee Die Casting Co.  
TSCA-V-C-050

Dear Mr. Park:

Enclosed please find one copy of two original Consent Agreements and Final Orders in resolution of the above captioned matter. The original has been filed with the Regional Hearing Clerk. As provided for in the Order, your client, Milwaukee Die Casting Co., is to forward by cashier's or certified check, the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) within twenty days of receipt of this letter. The check should be made payable to the Treasurer of the United States of America, and should be mailed to Mary Langer, Regional Hearing Clerk (5C-16), United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Failure to remit payment will result in referral of the matter to the United States Attorney for collection.

If you have any questions or comments on this matter, please do not hesitate to contact me at the above address or by phone at 312/886-6721.

Thank you for your cooperation in the resolution of this matter.

Sincerely,

Eric P. Dunham  
Assistant Regional Counsel

cc: Regional Hearing Clerk (5C-16) w/original CAFO  
J.F. Greene, Administrative Law Judge

MDC 000209

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V

In Re:

Milwaukee Die Casting  
Company, Inc.

Milwaukee, Wisconsin

Respondent.

Docket No. TSCA-V-C-050

Consent Agreement and Order

CONSENT AGREEMENT

WHEREAS:

1. This civil administrative proceeding for the assessment of a penalty was initiated pursuant to Section 16 (a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615 (a)

2. A Complaint and Notice of Opportunity for Hearing was filed by Complainant on January 7, 1982, charging that Respondent violated Section 15 of TSCA, 15 U.S.C. § 2614, and implementing regulations 40 C.F.R. §§ 761, et seq. The alleged violations occurred at Respondent's facility located in Milwaukee, Wisconsin and were observed by inspectors on behalf of the United States Environmental Protection Agency (U.S. EPA) during an inspection of that facility on April 21, 1980.

3. The parties have discussed settlement of this action during several phone conversations and an informal conference attended by Mr. Phocion S. Park, Counsel for Milwaukee Die Casting Company, Inc. and Mr. Eric P. Dunham, Counsel for U.S. EPA.

WHEREFORE, for the purpose of the proceeding only and without prejudice of any other proceeding:

1. Respondent hereby admits the jurisdictional allegations contained in the Complaint.

MDC 000210

2. Respondent neither admits nor denies the factual allegations set forth in the Complaint.

3. Respondent explicitly waives its right to request a hearing on the allegations of the Complaint filed herein.

4. The parties stipulate that Respondent has represented the following:

a. Respondent has tested and where appropriate marked its thirteen die casting machines maintained in service.

b. Respondent has and will store all PCBs and PCB items designated for disposal in an area that conforms with the requirements of 40 C.F.R. § 761.

c. Respondent has and will dispose of PCB contaminated waste oil mixtures, absorbent material and other PCB contaminated debris in conformance with the PCB regulations (40 C.F.R. 761).

5. In consideration of Respondent's commitment to maintain compliance with the PCB regulations at this facility and for cooperation shown to the government, Complainant consents to a mitigation of the penalty to ONE THOUSAND AND FIVE HUNDRED DOLLARS (\$1,500.00)

6. Respondent consents to the issuance of the Order hereinafter recited.

ORDER

1. Respondent shall within twenty (20) days of receipt of this signed Consent Agreement and Order, pay by cashier's or certified check ONE THOUSAND AND FIVE HUNDRED DOLLARS (\$1,500.00) payable to the Treasurer of the United States of America. Such payment shall be remitted to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

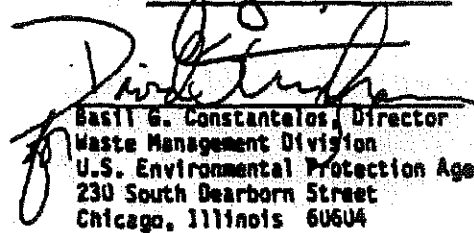
MOC 000211



2. Refusal to comply with the terms of this Order will result in the referral of this matter to the United States Attorney General for collection.

  
For: Milwaukee Die Casting, Co., Inc.  
Milwaukee, Wisconsin

Dated: July 14, 1983

  
Basil G. Constantelos, Director  
Waste Management Division  
U.S. Environmental Protection Agency  
230 South Dearborn Street  
Chicago, Illinois 60604

7/24/83

It is so ORDERED as agreed to by the parties.

  
Valdes V. Adankus  
Regional Administrator

MDC 000212

D

*Filed: 3 1 82*

PURCHASE AGREEMENT - COMMON SHARES

THIS AGREEMENT is executed this 19th day of February, 1982,  ~~pursuant to Agreement reached on December 8, 1981 and~~ effective as of the end of business on December 26, 1981 at which time the burdens and benefits of ownership were transferred to Buyer between SLYMAN ENTERPRISES, INC., a Delaware corporation, with general offices at No. 100 West Tenth Street, Wilmington, Delaware 19801, ("Buyer"), and FISHER CONTROLS INTERNATIONAL, INC., a Delaware corporation, located at P. O. Box 14755 St. Louis, Missouri 63178 ("Seller"), the holder of all of the common shares of MILWAUKEE DIE CASTING COMPANY, INC., a Delaware corporation with general offices at 4132 North Holton Street, Milwaukee, Wisconsin 53211 (the "Company").

RECITALS

Buyer desires to acquire all of the outstanding shares of capital stock of the Company, which consist of common shares. This Agreement is made to provide for the purchase by Buyer of all of the outstanding Common Shares as herein-after provided.

AGREEMENT

The parties hereto agree as follows:

Section 1. Purchase and Sale of Stock. Subject to the terms and conditions herein, and in accordance with the provisions of this Agreement, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all the outstanding shares of capital stock of the Company (including ISSUED AND ~~unissued~~ shares held by the Company).

Section 2. Closing. Subject to the terms and conditions of this Agreement, Seller agrees to deliver to Buyer at the closing hereunder, the certificates for Seller's common shares, with any separate stock power related thereto, and with all necessary Federal and state revenue stamps affixed at the Seller's expense and cancelled, in exchange for payment by Buyer of the sum of TWO MILLION ONE HUNDRED ~~THOUSAND~~ <sup>\$ 2,400,000</sup> THOUSAND DOLLARS (the "Purchase Price"), by bank transfer of immediately available funds at a bank acceptable to Seller or by such other means as may be agreed upon in writing by Buyer and Seller, which payment Buyer agrees to deliver in exchange for such shares. The "closing" shall be effected on February 19, 1982 at 7711 Bonhomme Avenue, St. Louis, Missouri 63105, or at such other time, date and/or place as Buyer and Seller may agree upon in writing. At the

AT 10:00 AM

closing, the parties shall exchange and deliver the certificates, opinions, agreements and other documents required under Section 6.

Section 3. Warranty as to Common Shares. Seller represents and warrants to Buyer, as an obligation surviving the closing hereunder, that Seller is, and at the time of the closing hereunder will be, the lawful owner of the common shares of the Company to be sold and delivered by it hereunder, free and clear of all liens, encumbrances and claims of every kind, with the absolute right to sell the same hereunder, and that the delivery of such shares to Buyer pursuant to this Agreement will transfer valid title to such shares, free and clear of all liens, encumbrances and claims of every kind.

Section 4. Essential State of Facts Concerning the Company and Seller. This Agreement is entered into by Buyer upon condition that the following statements are true and correct as of the closing in all material respects:

(a) Organization and Standing of the Company.

(i) The Company is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware, has corporate power to own its properties and to carry on its business as now conducted, and is qualified to do business as a foreign corporation in good standing in Wisconsin and the location of the properties owned or leased by the Company or the nature of its business activities do not require it to be qualified in any other jurisdiction. The copies of the Company's Articles of Incorporation and of the Company's By-Laws which have been delivered to Buyer, are complete and correct copies as now in effect.

(ii) The Company has no subsidiaries.

(b) Capitalization.

<sup>334</sup>  
The Company has an authorized capital stock consisting of one thousand (1,000) common shares (One Dollar par value) of which ~~five hundred (500)~~ common shares are issued and outstanding. ~~All of the~~ outstanding shares of capital stock of the Company are validly issued, fully paid and non-assessable and there are no outstanding options, warrants or other agreements or commitments to which the Company is a party or by which it is bound providing for the issuance of any additional shares of the Company's capital stock, or the sale or transfer of shares of such stock held in the Com-

and 134  
common  
shares are  
held in the  
Company's treasury  
following the purchase  
by the Company as referred to  
in Section 4 (b) below

Such 366 issued and

NOC 000124

pany's treasury, or the purchase or redemption by the Company of any outstanding shares of such stock.

(c) Financial Condition.

(i) The Company has never been audited as a separate entity. Unaudited financial statements of the Company, consisting of the balance sheet of the Company as of December 26, 1981, and the related statement of income and retained earnings of the Company for the year ended on such date are attached hereto as Exhibit A. (All such statements being referred to herein as the "Financial Statements"). The Financial Statements are in accordance with the books of account and records of the Company, are true and correct and present fairly the financial position of the Company as of the date indicated and the results of its operations for the period indicated, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the period indicated and prior periods. There are no footnotes pertaining to the Company contained in the audited financial statements of Seller and its related corporations for 1978 or any later year.

(ii) Since December 26, 1981, there have been no material adverse changes in the properties of the Company.

(iii) There are no material outstanding liabilities of the Company (whether accrued, fixed or contingent) (it being agreed that contingent does not include liabilities arising out of acts, none of which, even though incurred in the ordinary course of business, would have a material adverse effect on the business or properties of Company, by employees of Company in the ordinary course of business prior to December 27, 1981 but so close in time to such date as to prevent the reflection of such acts in the Financial Statements) existing on or prior to the date hereof other than (A) as and to the extent reflected or reserved against in the Financial Statements, (B) as and to the extent disclosed in this Agreement or any Exhibit hereto or (C) as and to the extent incurred in the ordinary course of business since December 26, 1981 none of which, even though incurred in the ordinary course of business, would have a material adverse effect on the business or properties of the Company.

(iv) The unpaid balance due on all of the accounts receivable of the Company reflected in the Financial Statements as reflected on the books of the Company, represents amounts due the Company in accordance with generally accepted accounting principles.

NDC 000125

(v) Inventories of the Company reflected in the Financial Statements are valued therein on a basis conforming to generally accepted accounting principles consistently applied.

(d) Agreements of the Company.

(i) Attached hereto as Exhibit B is a list of the following as of the date hereof:

- (1) All notes payable, mortgages, deeds of trust, pledges and other lien documents, and all security, loan or credit agreements to which the Company is a party or by which it is bound as guarantor. ✓
- (2) All bonus, incentive, deferred compensation, profit-sharing, retirement, insurance, disability benefit, death benefit or other benefit plans, trust agreements or arrangements for directors, officers and/or employees of the Company; all collective bargaining agreements; all employment agreements with directors, officers or employees, all sales representation agreements or arrangements to which the Company is a party or by which it is bound; all agreements or arrangements for professional services to which the Company is a party or by which it is bound other than agreements or arrangements for such professional services which are terminable at will by, and without liability (other than for services rendered to date of termination) to, the Company; and all agreements or arrangements with business consultants or business advisors, or for research, analysis or other special services, to which the Company is a party or by which it is bound.
- (3) All leases of real or personal property for use by the Company (or its assigns or sublessees), and all leases of real or personal property made by the Company as lessor.
- (4) All licenses and other agreements for the use of any patent, copyright, trademark, trade-name or trade secret or any other similar right (whether granted by or to the Company).

MDC 000126

(5) All agreements or commitments of the Company for the purchase of materials, supplies or services which in each case may either involve future payments by the Company of more than \$20,000 or contemplate performance extending three months or more beyond the date hereof; and all agreements or commitments by the Company for its sale of products, materials or services which may either involve an undelivered balance of such products or materials, or an unperformed balance of such services, having a sales price in excess of \$10,000 or contemplate performance extending three months or more from the date hereof.

(ii) There is no existing material default as to any obligation of the Company under any document listed on said Exhibit B.

(e) Patents and Other Protected Rights. Attached hereto as Exhibit C is a list of all patents, copyrights, trademarks, trade names, and applications therefor, owned by the Company on the date hereof, or used by it in the conduct of its business. The Company has no knowledge of any litigation or threatened litigation involving an issue as to the validity of any item listed on said Exhibit C.

(f) Title to and Condition of Assets. The Company has good and marketable title to all of its properties carried on its books as assets, including those reflected in the Financial Statements free and clear of all liens or encumbrances except (i) liens, encumbrances or liabilities reflected in the Financial Statements, (ii) liens or encumbrances existing under any of the documents listed on any Exhibit attached hereto, (iii) liens for current taxes, payment of which is not delinquent, and (iv) liabilities incurred in the ordinary course of business since December 26, 1981, which would not have a material adverse effect on the business or properties of the Company.

(g) Real Property. The Company owns no real property.

(h) Business in Ordinary Course. Since December 26, 1981, the operations of the Company, and transactions entered into by it, have been only as required in the ordinary course of its business; and since that date the Company has not, except in the ordinary course of its business, or as disclosed in writing to Buyer prior to the closing or as disclosed in any Exhibit attached hereto, (i) sold, leased

RE: purchase  
of shares

*this Agreement or*

or otherwise disposed, or encumbered, any of its assets, (ii) incurred or discharged any material liability or obligation (except as required in those obligations listed in Exhibit B), (iii) released or cancelled any obligation owed to it (except normal returns and allowances on sales made prior to the date hereof), (iv) waived any material right or (v) made any unusual expenditure or commitment therefor in excess of \$20,000.

(i) Employment Conditions. The Company is in material compliance with applicable Federal and state laws respecting employment and employment practices, terms and conditions of employment, wages and hours; and no unfair labor practice complaints are pending against the Company, or to the knowledge of the Company, threatened to be filed against the Company, with the National Labor Relations Board. No grievances or arbitration proceedings arising out of collective bargaining agreements are pending or threatened against the Company except as disclosed in Exhibit D; and no labor strikes are in effect or threatened against or affecting the Company.

(j) Litigation; Compliance with Certain Laws. There are no claims, actions, suits or other proceedings pending, or threatened, against or affecting the Company, before any Federal, state, municipal or other governmental authority, which involve the possibility of materially and adversely affecting the business, income, financial condition, properties or rights of the Company except as set forth in Exhibit D attached hereto. Company has performed all material obligations required to be performed by it under, is not in default under, or in violation of, or aware of any material default or violation by any other party to, any lease, license, mortgage, note payable, bond, indenture, loan or other similar instrument to which the Company is a party and which is material to the Company's operations. Corporate Purchase Contract No. 13812 between Seller and Company dated January 1, 1982 ("Contract No. 13812") is valid, binding and enforceable and in full force and effect. Seller purchases approximately 95% of its requirements of the die castings listed on attachment A to Contract No. 13812 from Company. To the best of Seller's knowledge and belief, the Company has complied with all applicable statutes, laws and regulations of the United States of America, and of all states and all foreign countries having jurisdiction, regulating monopoly or concerned in any way with antitrust regulation or restraint of trade. The Company is not in violation of any order, writ, injunction or decree of any court or any Federal, state, municipal or other governmental authority and none exist except as set forth in Exhibit D. Neither Com-



pany nor Seller have received any notice of default or violation of any occupational safety and health act, environmental protection act, ordinance or other law or regulation except as set forth in Exhibit D, nor is there any such violation which would cost more than \$10,000 to correct. There is no decree or judgment of any kind in existence enjoining or restraining the Company, or any of its directors, officers or stockholder, from taking any action relating to the business of the Company or from taking any action required or contemplated by this Agreement, except as set forth in said Exhibit D.

(k) Compensation Changes. Except as set forth in Exhibit E, since December 26, 1981, there has not been made:

(i) Any increase in, or commitment to increase, the salaries, bonuses or other forms of direct compensation payable to any of the directors, officers or employees of the Company above the amounts or rates thereof in effect as of December 26, 1981, except increases, or commitments to increase, of which Buyer has been advised in writing by the Company prior to the closing; or

(ii) Any increase in, or commitment to increase, deferred compensation, profit-sharing, retirement benefits, insurance coverage, disability benefits, death benefits, or other forms of benefits or indirect compensation for any of the directors, officers or employees of the Company above the amounts or rates thereof in effect as of December 26, 1981, except increases or commitments to increase, of which Buyer has been advised in writing by the Company prior to the execution of this Agreement.

(l) Tax Returns; Audits. The Company has filed with appropriate governmental agencies all tax returns which it is required to file on or before December 26, 1981, has paid (or has made adequate provision for payment of) all taxes shown due on such returns and is not delinquent in the payment of any taxes claimed to be due by any Federal, state or local taxing authority. The Company has not given any waiver or extension of any statute of limitations governing the time for assessment or collection of any Federal, state or local tax for any taxes due for years 1979, 1980 or 1981. Seller reserves the right to do so with regard to any tax liability which is its obligation.

(m) Obligations to Employees. Except as disclosed in writing to Buyer prior to execution of this Agreement the Company has paid, or made adequate accruals on its books for the payment of all reasonably anticipated obligations of the

Company, whether arising by operation of law, contract or past custom, for vacation and holiday pay, bonuses and other forms of compensation which are or may become payable to its directors, officers and employees on account of employment to date.

(n) Insurance. Exhibit F attached hereto sets forth the schedule of all insurance coverage presently carried in force and effect by the Company.

(o) Absence of Certain Changes. Since December 26, 1981, there has not been (i) any declaration, setting aside or payment of any dividend or other distribution in respect of any shares of the Company's outstanding capital stock except for the purchase by Company of ~~22,000~~ <sup>FW \$100,000</sup> shares of 134 common shares, which shall occur simultaneously with the closing, or any direct or indirect redemption, purchase or other acquisition by the Company of any shares of such stock, or any issuance by the Company of any shares of such stock, (ii) any hiring by the Company of any new officer, employee, agent or representative on a salary basis whose compensation is or will be at an annual rate exceeding \$10,000 or whose employment is not terminable upon 30 or fewer days' notice at the will of, and without liability on account thereof to, the Company; or (iii) any amendment of the Company's Articles of Incorporation or By-Laws. provision

(p) No Brokerage. Neither the Company nor Seller has incurred any liability for brokerage or finder's fees or agent's commissions in connection with this Agreement, or the transactions herein contemplated.

(q) Accidents and Claims. There have been no accidents or events which have resulted, or may result, in claims against the Company that are not either fully covered by insurance or by reserves made for such claims which are reflected in the balance sheet included in the Financial Statements except as set forth in Exhibit D and except payments to be made by the Company pursuant to the deductible provisions of any existing insurance policies.

(r) No Breach of Other Obligations by Sale Hereunder. The making of this Agreement, and the consummation of the transactions herein contemplated, will not result in the breach of, or constitute a default under, any other agreement or obligation binding upon the Company or Seller.

(s) Pension. The Senior Pension Plan of the Company has accumulated net assets available for benefits at least equal to the actuarially computed value of vested and non-

vested accrued benefit liability based upon the last actuarial study dated September, 1981.

(i) Seller has received favorable determination letters as to the qualification of all pension plans under section 401(a) of the Internal Revenue Code of 1954, as amended by amendments thereto by the Employee Retirement Income Security Act of 1974 ("ERISA") *except that the most recent agreement has not been submitted to the Internal Revenue Service for a determination.*

(ii) There are no actions, suits or claims which have been instituted or asserted, nor is Company aware of any facts which would give rise to any such action suit or claim against any of the pension plans or against Company with respect to the participation of employees employed in the business with respect to the pension plans. Except for the transfer of funds from the Fisher Controls Company, Inc. Master Trust to the Milwaukee Die Casting Company Pension Plan Trust, no "Reportable Event" as defined in Title IV of ERISA has occurred with respect to any of the Company's pension plans.

(iii) Seller has not incurred any liability (except for required premium payments) to the Pension Benefit Guaranty Corporation with respect to the pension plans.

(iv) Seller has delivered to Buyer true and complete copies of (A) the pension plan documents (B) the trust agreements with respect to the pension plans, (C) the most recently filed Forms 5500 (with related schedules and exhibits) with respect to the pension plans, (D) Forms 5300 (with related schedules and exhibits) filed with the Internal Revenue Service for qualification of the pension plans (E) a statement setting forth the actuarial assumptions and methods currently in use with respect to the pension plans, and (F) the most recently received reports prepared by the actuary for the Company.

(t) Affiliated Group. Company has been a member of the affiliated group of which ~~Fisher Controls International, Inc.~~ *Seller* is the common parent (the "Group") with respect to consolidated return years ended December, ~~1979~~, 1980 and 1981. The Group was and is eligible to file a consolidated return for federal income tax purposes; the Group made a proper election to file a consolidated return for each of the consolidated return years ended December ~~1979~~, 1980 and 1981; and the Group filed or will file in accordance with Treasury Regulations a consolidated return for each consolidated return year ended December ~~1979~~, 1980 and 1981. The amount of taxable income of the Company for taxable years ~~1979 (March-December)~~, 1980 and 1981 available to offset

Following the closing

Five net operating loss carrybacks of the Company incurred by the Company in future years, as determined under applicable Treasury Regulations assuming that the Company is no longer a member of the Group and is subject to the SLRY Rules of applicable Treasury Regulations amounts to at least One Million Eight Hundred Thousand Dollars. Seller makes no representation as to the permissibility of carrying back such net operating loss.

(u) Disclosure. Seller after due inquiry is not aware of any facts not disclosed to Buyer the existence of which would have a material adverse effect on the business as conducted as of the closing or properties of the Company.

Section 5. Essential State of Facts Concerning Buyer. This Agreement is entered into by the Seller upon condition that the following statements are true and correct as of the date hereof in all material respects:

(a) Organization and Good Standing. Buyer is a corporation validly organized and existing in good standing under the laws of Delaware and in all other states where such qualification is required in connection with this Agreement.

(b) Corporate Authority. The execution, delivery and performance of this Agreement by Buyer have been duly authorized by all proper corporate action on the part of Buyer and are within its corporate powers and the making of this Agreement and the consummation of the transactions herein contemplated, will not result in the breach of, or constitute a default under, any other agreement or obligation binding upon the Buyer.

(c) No Brokerage. Buyer has not incurred, and will not incur, any liability for brokerage or finders' fees or agents' commissions in connection with this Agreement, or the transactions herein contemplated.

Section 6. Conditions of Buyer's Obligation. The following provisions, except to the extent waived in writing by Buyer at its option, are conditions precedent to the obligations of Buyer to close:

(a) Management. Seller shall have delivered to Buyer, except as otherwise requested in writing by Buyer prior to the closing, the written resignations of all directors as directors and officers of the Company, to be effective in each case at the time of closing.

MDC 000132

(b) Counsel's Opinion. Buyer shall have received the opinion of Dennis J. Green, Esq., counsel for Seller, dated as of the closing as set forth in Exhibit G hereto.

(c) Sales Agreement. ~~Buyer's purchase~~ Contract No. 13812 between Seller and Company shall be binding upon Seller and there shall be no material default as to any obligation of the Company.

(d) Real Estate. The purchase and sale pursuant to the real estate agreement as set forth in Exhibit H attached hereto shall close simultaneously with the closing of the purchase and sale pursuant to the terms of this Agreement.

(e) Consents. All requisite consents and approvals of third parties required to be received by or on the part of Buyer or Seller identified in exhibits hereto for the consummation of the transactions contemplated hereby, or to prevent any agreement of Buyer or of Seller from terminating as a result of the performance by Buyer or Seller of its respective obligations under this Agreement, shall have been obtained.

Section 7. Conditions of Seller's Obligation. The following provisions, except to the extent waived in writing by Seller at its option, are conditions precedent to the obligations of Seller to close:

(a) Real Estate. The purchase and sale pursuant to the real estate agreement as set forth in Exhibit H attached hereto shall close simultaneously with the closing of the purchase and sale pursuant to the terms of this Agreement.

(b) Consents. All requisite consents and approvals of third parties required to be received by or on the part of Buyer or Seller identified in exhibits hereto for the consummation of the transactions contemplated hereby, or to prevent any agreement of Buyer or of Seller from terminating as a result of the performance by Buyer or Seller of its respective obligations under this Agreement, shall have been obtained.

Section 8. Certain Remedies.

(a) Non-Collectible Accounts Receivable. <sup>assignment</sup> As an obligation of Seller which survives the closing, Seller shall pay to Buyer, against delivery to Seller of the uncollected account receivable in question, the amount by which the uncollected balance <sup>as of the closing</sup> on February 19, 1982 of the account receivable shown on the books of the Company for Doug Nash

and provided further that the obligation to pay shall be subject to Buyer having made a diligent effort consistent with its normal business practices, but which shall include such additional billing, follow-up and collection efforts as the Company has heretofore done with respect to its operations, to collect the uncollected balance of the accounts.

Equipment and Engineering and Efficient Energy Systems, Inc. shall exceed the total of any amounts collected within 90 days after the closing on such account receivable provided, however, that payments received after the closing on such account receivable shall be first applied to the oldest balance due, unless otherwise directed by the payer. Such payment and delivery shall take place on May 20, 1982.

as to any balance remaining on such acct. after the closing of the balance of the accounts receivable shall release Seller of its obligations hereunder.

(b) Indemnification. As an obligation of Seller which survives the closing except for losses or costs which arise out of any misrepresentation or breach by Buyer of any representation or covenant given in the Agreement and except as otherwise provided in this Agreement, Seller shall reimburse Buyer to the extent of any loss or cost (whether involving payment or book adjustment) incurred by Buyer or the Company on account of:

(i) Liabilities of the Company (after deducting any income or the value of any benefits associated therewith to the Company or the Buyer) existing or arising out of any transaction entered into or state of facts existing prior to the closing (including without limitation, tax liabilities of the Company and the Group) to the extent not reflected or reserved against in full in the balance sheet included in the Financial Statements, not covered by insurance or not otherwise disclosed in this Agreement or any Exhibit hereto; provided Buyer, its employees and the Company's employees do not take any action or omit to take any action subsequent to the closing which results in such liability; and further provided that contractual commitments of Company entered into in the ordinary course of business, none of which will have a material adverse effect on the business or properties of Company, shall not be included under this subsection (i).

(ii) Any statement of fact in Section 4 not being correct, to the extent not covered by insurance; and

(iii) Out-of-pocket costs and expenses (including reasonable attorneys' fees) incident to all claims, actions, suits or other proceedings relating to any matter covered by the preceding subparagraphs (i) and (ii).

(c) Minimum Liability Required for Recovery. Any other provision of this Agreement to the contrary notwithstanding, Buyer agrees that Seller shall be obligated to make payments to and to reimburse Buyer under this Section only to the extent that the aggregate obligations of Seller to Buyer under parts (a) and (b) of this Section 8, shall exceed the total of \$5,000 plus over-accrued liabilities shown on the Financial Statements, if any.

MDC 000134

(d) Limitations on Liability. Any other provision in this Agreement to the contrary notwithstanding, it is agreed that:

(i) Seller shall not be obligated to Buyer under Section 8(b) unless a claim therefor is asserted by Buyer in writing within two years after the date of the closing; provided that in the case of tax liabilities such claim may be asserted in writing at any time prior to the expiration of the applicable statute of limitations <sup>relating to the Group</sup> as to such tax.

(ii) Under <sup>this Agreement, except as provided in Section 14 or 14(c) or 14(d).</sup> no circumstances shall Seller's obligations to Buyer under ~~Sections 8(a) and 14~~ exceed in the aggregate the sum of \$500,000.

(iii) Except as otherwise provided in this Agreement, Buyer's rights against Seller shall be limited to its rights under this Section 8 except in the case of fraud or intentional misrepresentation.

<sup>at Seller's</sup> (e) In the event of any such loss, cost or claim, Buyer shall give Seller prompt written notice of such loss, cost or claim and allow Seller to <sup>fully</sup> participate in the defense and settlement of any such claim, ~~in its discretion.~~ <sup>in the event of participation by Seller the parties agree to fully cooperate in the defense and settlement of any such loss, cost or claim, and each party shall bear its costs of defense and settlement of such claims.</sup> No such claim will be settled without the joint approval of Buyer and Seller. Failure to provide such notice shall be deemed a waiver by Buyer of its rights hereunder. Buyer shall have the option of turning the defense of any such claim over to Seller.

#### Section 9. Tax Benefits.

(a) Refunds. The parties agree that which entity is entitled to ultimately receive the benefit of a consolidated tax refund is a matter which is not addressed in the Internal Revenue Code and that Treasury Regulations provide that the common parent is the agent for each subsidiary in an affiliated group. In the event that the Seller obtains a federal tax benefit as a result of (i) a carryback of any losses or credits or (ii) inclusion of the operations of Company in the consolidated return of the Group, in either case arising out of the operation of the business of the Company subsequent to December 26, 1981, the parties agree that such tax benefits received by Seller will be paid by Seller to Company. Seller agrees to cooperate with Company and to take such steps as are <sup>reasonably</sup> necessary to file claims for tax refunds based on post-acquisition operations of Company which result in (i) carrybacks against pre-acquisition taxable income produced by Company or (ii) offsets of Group

at Buyer's expense

taxable income by losses produced by Company, and that any refund of taxes and/or interest received by Seller resulting therefrom will, immediately upon receipt by Seller, be paid to Company.

is 1982 prior to the closing

(b) Tax Year. It is the intention of Buyer and Seller to file consolidated returns. Seller intends to file a consolidated return for tax year 1982 and to cooperate in every regard including but not limited to recognition of the removal of Company from the Group for the 1982 consolidated return year. Buyer agrees to cause the post-acquisition operations of Company beginning on December 27, 1981 to be included in Buyer's consolidated return.

Section 10. Employees. Buyer represents that it intends to employ, at the closing, for the foreseeable future, consistent with economic conditions, all employees of the Company and to maintain for at least a period of one (1) year, the present level of benefits for non-union employees, excluding TRAESOP. Furthermore, the Buyer recognizes that the International Association of Machinists, AFL-CIO is the certified bargaining agent for most of the hourly employees employed by the Company and recognizes the outstanding agreements between the Company and with such Union.

Section 11. 1981 Tax Payments. The Buyer shall cause the Company to promptly reimburse the Seller for any payments made by the Group as a result of the Company's operations for purposes of the consolidated return year ending December 26, 1981 to the extent (i) Company has made provision therefor in the Financial Statements and (ii) such payments have not already been made by Company.

Section 12. Post-Closing Cooperation. It is recognized that either party may need data and information relating to the Company subsequent to the closing in order to comply with the rules, regulations and requests of governmental organizations. The parties shall render reasonable cooperation to each other for such purpose. Seller shall provide the services of Messrs. Art Rodgers and William Rechkemmer to Company for at least 3 weeks following the closing to aid in transition. Except for the services of Messrs. Rodgers and Rechkemmer, the party requesting assistance from the other party shall bear all reasonable out-of-pocket costs and expenses incurred by such assisting party (excluding salaries or wages of its employees) and such assistance shall be subject to compliance by the requesting party with the assisting party's regulations regarding security.

on the same reimbursable basis as described in the Exhibits. These individuals shall be under the direction and control of Buyer. The Seller shall have no responsibility or liability for their actions in connection with the operations of the Company and Buyer during such time period.

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Section 13. Corporate Purchase Contracts. In addition to the sales made by Company to Seller as a customer pursuant to Contract No. 13812 Seller purchases additional zinc and aluminum-base die casting products such as those produced by Company from other vendors pursuant to corporate sales agreements which have terms expiring at various times over the next two years. Seller agrees that for a period of two years following the closing, it will allow Company to bid competitively on all purchases made by it of such products not covered by Contract No. 13812 or by other outstanding sales agreements and to be considered and allowed to compete as the contracting party under future sales agreements as the terms of such existing sales agreements expire. ~~Seller further agrees that it will award purchase contracts and sales agreements to Company in the event that Company's bid is at least equal to the lowest competing bid.~~

Section 14. PCBs. The Company has received a Complaint and Notice of Opportunity for Hearing dated January 7, 1982 concerning violations of the Toxic Substances Control Act. The alleged violations arise out of the Company's use of materials containing PCBs which contaminated the machinery and equipment and sewer system. With regard to the sewer system, the Company received a letter dated November 20, 1975 from the Department of Natural Resources, State of Wisconsin, advising of an apparent violation of WPDES permit no. WIO-0001465. The alleged violation of the Toxic Substances Control Act; the alleged violation of WPDES permit no. WI-0001465; and any violation of any law, rule or regulation in existence on the date of the closing arising out of the use by Company of PCBs shall be the obligation and responsibility of Seller. Any personal injury claims arising out of the use by Company of PCBs shall remain the obligation and responsibility of Seller. Buyer agrees that it will not knowingly use PCBs in the operations of Company without first consulting with Seller. Buyer agrees that any operational costs, including but not limited to decontamination and inspection costs, incurred as a result of the use by Company of PCBs will be paid by Company up to a cost of \$12,000. Seller agrees that any such operational costs in excess of \$12,000 shall be the obligation and responsibility of Seller provided, however, that Buyer agrees that Company will not incur any such operational cost in excess of \$12,000 before it has consulted with Seller concerning such cost. Seller's obligations under this Section 14. for operational costs shall terminate on December 31, 1989 except for claims asserted by Buyer in writing prior to that date.

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Section 14. PCB's. The Company has received a Complaint and Notice of Opportunity for Hearing dated January 7, 1982 concerning alleged violations of the Toxic Substances Control Act arising out of alleged concentrations of PCB's within its die casting machines. The Company also received a letter dated November 28, 1975 from the Department of Natural Resources, State of Wisconsin, advising of an apparent violation of WPDES permit no. WI-0001465 and subsequently under letter dated December 10, 1975, the Company apprised the Department of the actions taken to correct any violation. The alleged violation of the Toxic Substances Control Act; the alleged violation of WPDES permit no. WI-0001465 as it relates to PCB's; and any violation of any law, rule or regulation in existence on the date of the closing arising out of the use by Company of PCB's prior to the closing shall be the obligation and responsibility of the Seller. Any personal injury claims against the Company or the Buyer arising out of the use by Company of PCB's prior to the closing shall remain the obligation and responsibility of the Seller as provided herein. Seller shall assume the defense and/or settlement of any such violations or personal injury claims. Buyer agrees that it and the Company will not use or knowingly introduce PCB's in the operations of the Company or on the property on which the Company's operations are conducted without the prior written consent of Seller, which shall not be unreasonably withheld and Seller's obligation hereunder is conditional upon compliance with the foregoing representation and Buyer's and the Company's compliance from and after the closing with laws, rules and regulations relating to PCB's. Necessary decontamination and inspection costs required by law incurred as a result of the use by Company of PCB's prior to the closing will be paid by Company except that Seller agrees that any such reasonable and necessary decontamination and inspection costs incurred by the Company as a result of laws or governmental regulations in effect as of the closing in excess of \$12,000 relating to the property of the Company as of the date hereof (other than die casting machines) shall be the obligation and responsibility of Seller provided, however, that Buyer agrees that Company will not incur any such costs in excess of \$12,000 before it has consulted with Seller concerning such costs. Seller's obligations under this Section 14 shall terminate on December 31, 1989 except for claims asserted by Buyer in writing prior to that date.

Section 15. Miscellaneous.

(a) Notices. All notices, requests, demands and other communications in connection with this Agreement shall be made in writing and shall be deemed to have been given when given personally to the person indicated below as authorized to receive the same by mail for Seller, or for Buyer, as the case may be, or if mailed, then 48 hours after mailing at any general or branch United States Post Office by registered or certified mail, postage prepaid, addressed if given to Seller, to:

General Counsel  
FISHER CONTROLS INTERNATIONAL, INC.  
P. O. Box 14755  
St. Louis, Missouri 63178

or if given to Buyer, to:

George J. Slyman  
ACCURATE DIE CASTING CO.  
3089 East 80th Street  
Cleveland, Ohio 44104

With a copy to:

Robert E. Glaser  
Arter & Hadden  
1144 Union Commerce Building  
Cleveland, Ohio 44115

or mailed to such other persons and/or addresses as Buyer or Sellers, respectively, may designate by notice given in like manner.

(b) Costs of Closing. Each party shall pay and bear its own expenses and fees incurred in connection with this Agreement and the transactions contemplated hereby and no such expenses or fees shall be paid by Company.

*Except for the letter agreement regarding indemnification dated Feb. 8, 1979*

(c) Entire Agreement. This Agreement sets forth the entire understanding of the parties relating to the subject matter thereof and supersedes all prior agreements and understandings, whether oral or written. This Agreement shall not be modified, amended or terminated except by written agreement of all parties. Captions appearing in this Agreement are for convenience only and shall not be deemed to explain, limit, or amplify the provisions hereof.

(d) Assignment. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.

<sup>2</sup>  
(d) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

<sup>F</sup>  
(e) Publicity. The parties agree that no publicity release or announcement concerning the transactions contemplated hereby shall be issued without the advance approval in form and substance by the parties.

IN WITNESS WHEREOF, Buyer and the Seller have executed this Agreement as of the day and year first above written.

SLYMAN ENTERPRISES, INC.

By \_\_\_\_\_

FISHER CONTROLS INTERNATIONAL, INC.

By \_\_\_\_\_  
(Vice President (Finance and Administration))

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PURCHASE AGREEMENT - COMMON SHARES

THIS AGREEMENT is executed this 23rd day of February, 1982 between SLYMAN INDUSTRIES, INC., a Delaware corporation, with general offices at No. 100 West Tenth Street, Wilmington, Delaware 19801, ("Buyer"), and FISHER CONTROLS INTERNATIONAL, INC., a Delaware corporation, located at P.O. Box 14755 St. Louis, Missouri 63178 ("Seller"), the holder of all of the common shares (excluding Treasury shares) of MILWAUKEE DIE CASTING COMPANY, INC., a Delaware corporation, with general offices at 4132 North Holton Street, Milwaukee, Wisconsin 53211 (the "Company"), effective as of the end of business on December 26, 1981 at which time the burdens and benefits of ownership were transferred to Buyer pursuant to a proposal discussed by Buyer and Seller on December 8, 1981 which was approved by Buyer's Board of Directors on December 18, 1981.

RECITALS

Buyer desires to acquire all of the issued and outstanding shares of capital stock of the Company, which consist of common shares. This Agreement is made to provide for the purchase by Buyer of all of the issued and outstanding Common Shares as hereinafter provided.

AGREEMENT

The parties hereto agree as follows:

Section 1. Purchase and Sale of Stock. Subject to the terms and conditions herein, and in accordance with the provisions of this Agreement, Seller sells to Buyer, and Buyer purchases from Seller, all the issued and outstanding shares of capital stock of the Company (excluding treasury shares held by the Company).

Section 2. Closing. Subject to the terms and conditions of this Agreement, Seller agrees to deliver to Buyer at the closing hereunder, the certificates for Seller's common shares, with any separate stock power related thereto, and with all necessary Federal and state revenue stamps affixed at the Seller's expense and cancelled, in exchange for payment by Buyer of the sum of THREE HUNDRED NINETY-SIX THOUSAND DOLLARS (the "Purchase Price"), by bank wire transfer of immediately available funds at a bank acceptable to Seller or by such other means as may be agreed upon in writing by Buyer and Seller, which payment Buyer agrees to deliver in exchange for such shares. The "closing" shall be effected on February 23, 1982 at 1144 Union Commerce Building, Cleveland, Ohio 44115 at 10:00 a.m., or at such other

time, date and/or place as Buyer and Seller may agree upon in writing. At the closing, the parties shall exchange and deliver the certificates, opinions, agreements and other documents required under Section 6.

Section 3. Warranty as to Common Shares. Seller represents and warrants to Buyer, as an obligation surviving the closing hereunder, that Seller is, and at the time of the closing hereunder will be, the lawful owner of the common shares of the Company to be sold and delivered by it hereunder, free and clear of all liens, encumbrances and claims of every kind, with the absolute right to sell the same hereunder, and that the delivery of such shares to Buyer pursuant to this Agreement will transfer valid title to such shares, free and clear of all liens, encumbrances and claims of every kind.

Section 4. Essential State of Facts Concerning the Company and Seller. This Agreement is entered into by Buyer upon condition that the following statements are true and correct as of the closing in all material respects:

(a) Organization and Standing of the Company.

(i) The Company is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware, has corporate power to own its properties and to carry on its business as now conducted, and is qualified to do business as a foreign corporation in good standing in Wisconsin and the location of the properties owned or leased by the Company or the nature of its business activities do not require it to be qualified in any other jurisdiction. The copies of the Company's Articles of Incorporation and of the Company's By-Laws which have been delivered to Buyer, are complete and correct copies as now in effect.

(ii) The Company has no subsidiaries.

(b) Capitalization.

The Company has an authorized capital stock consisting of one thousand (1,000) common shares (One Dollar par value) of which sixty-six (66) common shares are issued and outstanding and 434 common shares all held in the Company's treasury following the purchase by the Company as referred to in Section 4(c) below. Such 66 issued and outstanding shares of capital stock of the Company are, and prior to the purchase by the Company of such 434 shares they were, validly issued, fully paid and non-assessable and there are no outstanding options, warrants or other agreements or commitments to which the Company is a party or by which it is

bound providing for the issuance of any additional shares of the Company's capital stock, or the sale or transfer of shares of such stock held in the Company's treasury, or the purchase or redemption by the Company of any outstanding shares of such stock.

**(c) Financial Condition.**

(i) The Company has never been audited as a separate entity. Unaudited financial statements of the Company, consisting of the balance sheet of the Company as of December 26, 1981, and the related statement of income and retained earnings of the Company for the year ended on such date are attached hereto as Exhibit A. (All such statements being referred to herein as the "Financial Statements"). The Financial Statements are in accordance with the books of account and records of the Company, are true and correct and present fairly the financial position of the Company as of the date indicated and the results of its operations for the period indicated, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the period indicated and prior periods. There are no footnotes pertaining to the Company contained in the audited financial statements of Seller and its related corporations for 1978 or any later year.

(ii) Since December 26, 1981, there have been no material adverse changes in the properties of the Company.

(iii) There are no material outstanding liabilities of the Company (whether accrued, fixed or contingent) (it being agreed that contingent does not include liabilities arising out of acts, none of which, even though incurred in the ordinary course of business, would have a material adverse effect on the business or properties of Company, by employees of Company in the ordinary course of business prior to December 27, 1981 but so close in time to such date as to prevent the reflection of such acts in the Financial Statements) existing on or prior to the date hereof other than (A) as and to the extent reflected or reserved against in the Financial Statements, (B) as and to the extent disclosed in this Agreement or any Exhibit hereto or (C) as and to the extent incurred in the ordinary course of business since December 26, 1981 none of which, even though incurred in the ordinary course of business, would have a material adverse effect on the business or properties of the Company.

(iv) The unpaid balance due on all of the accounts receivable of the Company reflected in the Financial Statements as reflected on the books of the Company, represents



amounts due the Company in accordance with generally accepted accounting principles.

(v) Inventories of the Company reflected in the Financial Statements are valued therein on a basis conforming to generally accepted accounting principles consistently applied.

(d) Agreements of the Company.

(i) Attached hereto as Exhibit B is a list of the following as of the date hereof:

- (1) All notes payable, mortgages, deeds of trust, pledges and other lien documents, and all security, loan or credit agreements to which the Company is a party or by which it is bound as guarantor.
- (2) All bonus, incentive, deferred compensation, profit-sharing, retirement, insurance, disability benefit, death benefit or other benefit plans, trust agreements or arrangements for directors, officers and/or employees of the Company; all collective bargaining agreements; all employment agreements with directors, officers or employees, all sales representation agreements or arrangements to which the Company is a party or by which it is bound; all agreements or arrangements for professional services to which the Company is a party or by which it is bound other than agreements or arrangements for such professional services which are terminable at will by, and without liability (other than for services rendered to date of termination) to, the Company; and all agreements or arrangements with business consultants or business advisors, or for research, analysis or other special services, to which the Company is a party or by which it is bound.
- (3) All leases of real or personal property for use by the Company (or its assigns or sublessees), and all leases of real or personal property made by the Company as lessor.
- (4) All licenses and other agreements for the use of any patent, copyright, trademark, trade-name or trade secret or any other similar right (whether granted by or to the Company).

(5) All agreements or commitments of the Company for the purchase of materials, supplies or services which in each case may either involve future payments by the Company of more than \$20,000 or contemplate performance extending three months or more beyond the date hereof; and all agreements or commitments by the Company for its sale of products, materials or services which may either involve an undelivered balance of such products or materials, or an unperformed balance of such services, having a sales price in excess of \$10,000 or contemplate performance extending three months or more from the date hereof.

(ii) There is no existing material default as to any obligation of the Company under any document listed on said Exhibit B.

(e) Patents and Other Protected Rights. Attached hereto as Exhibit C is a list of all patents, copyrights, trademarks, trade names, and applications therefor, owned by the Company on the date hereof, or used by it in the conduct of its business. The Company has no knowledge of any litigation or threatened litigation involving an issue as to the validity of any item listed on said Exhibit C.

(f) Title to and Condition of Assets. The Company has good and marketable title to all of its properties carried on its books as assets, including those reflected in the Financial Statements free and clear of all liens or encumbrances except (i) liens, encumbrances or liabilities reflected in the Financial Statements, (ii) liens or encumbrances existing under any of the documents listed on any Exhibit attached hereto, (iii) liens for current taxes, payment of which is not delinquent, and (iv) liabilities incurred in the ordinary course of business since December 26, 1981, which would not have a material adverse effect on the business or properties of the Company.

(g) Real Property. The Company owns no real property.

(h) Business in Ordinary Course. Since December 26, 1981, the operations of the Company, and transactions entered into by it, have been only as required in the ordinary course of its business; and since that date the Company has not, except in the ordinary course of its business, or as disclosed in writing to Buyer prior to the closing or as disclosed in this Agreement or any Exhibit attached hereto,

(i) sold, leased or otherwise disposed, or encumbered, any of its assets, (ii) incurred or discharged any material liability or obligation (except as required in those obligations listed in Exhibit B), (iii) released or cancelled any obligation owed to it (except normal returns and allowances on sales made prior to the date hereof), (iv) waived any material right or (v) made any unusual expenditure or commitment therefor in excess of \$20,000.

(i) Employment Conditions: The Company is in material compliance with applicable Federal and state laws respecting employment and employment practices, terms and conditions of employment, wages and hours; and no unfair labor practice complaints are pending against the Company, or to the knowledge of the Company, threatened to be filed against the Company, with the National Labor Relations Board. No grievances or arbitration proceedings arising out of collective bargaining agreements are pending or threatened against the Company except as disclosed in Exhibit D; and no labor strikes are in effect or threatened against or affecting the Company.

(j) Litigation; Compliance with Certain Laws. There are no claims, actions, suits or other proceedings pending, or threatened, against or affecting the Company, before any Federal, state, municipal or other governmental authority, which involve the possibility of materially and adversely affecting the business, income, financial condition, properties or rights of the Company except as set forth in Exhibit D attached hereto. Company has performed all material obligations required to be performed by it under, is not in default under, or in violation of, or aware of any material default or violation by any other party to, any lease, license, mortgage, note payable, bond, indenture, loan or other similar instrument to which the Company is a party and which is material to the Company's operations. Corporate Purchase Contract No. 13812 between Seller and Company dated January 1, 1982 ("Contract No. 13812") is valid, binding and enforceable and in full force and effect. Seller purchases approximately 95% of its requirements of the die castings listed on attachment A to Contract No. 13812 from Company. To the best of Seller's knowledge and belief, the Company has complied with all applicable statutes, laws and regulations of the United States of America, and of all states and all foreign countries having jurisdiction, regulating monopoly or concerned in any way with antitrust regulation or restraint of trade. The Company is not in violation of any order, writ, injunction or decree of any court or any Federal, state, municipal or other governmental authority and none exist except as set forth in Exhibit D. Neither Company nor Seller have received any notice of default or

violation of any occupational safety and health act, environmental protection act, ordinance or other law or regulation except as set forth in Exhibit D, nor is there any such violation which would cost more than \$10,000 to correct. There is no decree or judgment of any kind in existence enjoining or restraining the Company, or any of its directors, officers or stockholder, from taking any action relating to the business of the Company or from taking any action required or contemplated by this Agreement, except as set forth in said Exhibit D.

(k) Compensation Changes. Except as set forth in Exhibit E, since December 26, 1981, there has not been made:

(i) Any increase in, or commitment to increase, the salaries, bonuses or other forms of direct compensation payable to any of the directors, officers or employees of the Company above the amounts or rates thereof in effect as of December 26, 1981, except increases, or commitments to increase, of which Buyer has been advised in writing by the Company prior to the closing; or

(ii) Any increase in, or commitment to increase, deferred compensation, profit-sharing, retirement benefits, insurance coverage, disability benefits, death benefits, or other forms of benefits or indirect compensation for any of the directors, officers or employees of the Company above the amounts or rates thereof in effect as of December 26, 1981, except increases or commitments to increase, of which Buyer has been advised in writing by the Company prior to the execution of this Agreement.

(l) Tax Returns; Audits. The Company has filed with appropriate governmental agencies all tax returns which it is required to file on or before December 26, 1981, has paid (or has made adequate provision for payment of) all taxes shown due on such returns and is not delinquent in the payment of any taxes claimed to be due by any Federal, state or local taxing authority. The Company has not given any waiver or extension of any statute of limitations governing the time for assessment or collection of any Federal, state or local tax for any taxes due for years 1979, 1980 or 1981. Seller reserves the right to do so with regard to any tax liability which is its obligation.

(m) Obligations to Employees. Except as disclosed in writing to Buyer prior to execution of this Agreement the Company has paid, or made adequate accruals on its books for the payment of all reasonably anticipated obligations of the Company, whether arising by operation of law, contract or past custom, for vacation and holiday pay, bonuses and othe

forms of compensation which are or may become payable to its directors, officers and employees on account of employment to date.

(n) Insurance. Exhibit F attached hereto sets forth the schedule of all insurance coverage presently carried in force and effect by the Company.

(o) Absence of Certain Changes. Since December 26, 1981, there has not been (i) any declaration, setting aside or payment of any dividend or other distribution in respect of any shares of the Company's outstanding capital stock except for the purchase by Company of 434 common shares for \$2,604,000 (\$2,004,000 via bank wire and a credit memo of \$600,000 in reduction of Fisher's payables to the Company), which shall occur prior to or simultaneously with the closing, or any direct or indirect redemption, purchase or other acquisition by the Company of any shares of such stock, or any issuance by the Company of any shares of such stock, (ii) any hiring by the Company of any new officer, employee, agent or representative on a salary basis whose compensation is or will be at an annual rate exceeding \$10,000 or whose employment is not terminable upon 30 or fewer days' notice at the will of, and without liability on account thereof to, the Company; or (iii) any amendment of the Company's Articles of Incorporation or By-Laws.

(p) No Brokerage. Neither the Company nor Seller has incurred any liability for brokerage or finder's fees or agent's commissions in connection with this Agreement, or the transactions herein contemplated.

(q) Accidents and Claims. There have been no accidents or events which have resulted, or may result, in claims against the Company that are not either fully covered by insurance or by reserves made for such claims which are reflected in the balance sheet included in the Financial Statements except as set forth in Exhibit D and except payments to be made by the Company pursuant to the deductible provisions of any existing insurance policies.

(r) No Breach of Other Obligations by Sale Hereunder. The making of this Agreement, and the consummation of the transactions herein contemplated, will not result in the breach of, or constitute a default under, any other agreement or obligation binding upon the Company or Seller.

(s) Pension. The Senior Pension Plan of the Company has accumulated net assets available for benefits at least equal to the actuarially computed value of vested and non-vested accrued benefit liability based upon the last actuarial study dated September, 1981.

(i) Seller has received favorable determination letters as to the qualification of all pension plans under section 401(a) of the Internal Revenue Code of 1954, as amended by amendments thereto by the Employee Retirement Income Security Act of 1974 ("ERISA") except that the most recent amendment dated January 25, 1982 has not been submitted to the Internal Revenue Service for a determination.

(ii) There are no actions, suits or claims which have been instituted or asserted, nor is Company aware of any facts which would give rise to any such action suit or claim against any of the pension plans or against Company with respect to the participation of employees employed in the business with respect to the pension plans. Except for the transfer of funds from the Fisher Controls Company, Inc. Master Trust to the Milwaukee Die Casting Company Pension Plan Trust, no "Reportable Event" as defined in Title IV of ERISA has occurred with respect to any of the Company's pension plans.

(iii) Seller has not incurred any liability (except for required premium payments) to the Pension Benefit Guaranty Corporation with respect to the pension plans.

(iv) Seller has delivered to Buyer true and complete copies of (A) the pension plan documents including the most recent amendment dated January 25, 1982, (B) the trust agreements with respect to the pension plans, (C) the most recently filed Forms 5500 (with related schedules and exhibits) with respect to the pension plans, (D) Forms 5300 (with related schedules and exhibits) filed with the Internal Revenue Service for qualification of the pension plans (E) a statement setting forth the actuarial assumptions and methods currently in use with respect to the pension plans, and (F) the most recently received reports prepared by the actuary for the Company.

(t) Affiliated Group. Company has been a member of the affiliated group of which Seller is the common parent (the "Group") with respect to consolidated return years ended December 1980 and 1981. The Group was and is eligible to file a consolidated return for federal income tax purposes; the Group made a proper election to file a consolidated return for each of the consolidated return years ended December 1980 and 1981; and the Group filed or will file in accordance with Treasury Regulations a consolidated return for each consolidated return year ended December 1980 and 1981. The amount of taxable income of the Company for taxable years 1980 and 1981 available to offset net operating loss carrybacks of the Company incurred by the Company

in future years, as determined under applicable Treasury Regulations assuming that the Company is no longer a member of the Group and is subject to the SLRY Rules of applicable Treasury Regulations amounts to at least One Million Five Hundred Thousand Dollars. Seller makes no representation as to the permissibility of carrying back such net operating loss.

(u) Disclosure. Seller after due inquiry is not aware of any facts not disclosed to Buyer the existence of which would have a material adverse effect on the business as conducted as of the closing or properties of the Company.

Section 5. Essential State of Facts Concerning Buyer. This Agreement is entered into by the Seller upon condition that the following statements are true and correct as of the date hereof in all material respects:

(a) Organization and Good Standing. Buyer is a corporation validly organized and existing in good standing under the laws of Delaware and in all other states where such qualification is required in connection with this Agreement.

(b) Corporate Authority. The execution, delivery and performance of this Agreement by Buyer have been duly authorized by all proper corporate action on the part of Buyer and are within its corporate powers and the making of this Agreement and the consummation of the transactions herein contemplated, will not result in the breach of, or constitute a default under, any other agreement or obligation binding upon the Buyer.

(c) No Brokerage. Buyer has not incurred, and will not incur, any liability for brokerage or finders' fees or agents' commissions in connection with this Agreement, or the transactions herein contemplated.

Section 6. Conditions of Buyer's Obligation. The following provisions, except to the extent waived in writing by Buyer at its option, are conditions precedent to the obligations of Buyer to close:

(a) Management. Seller shall have delivered to Buyer, except as otherwise requested in writing by Buyer prior to the closing, the written resignations of all directors as directors and officers of the Company, to be effective in each case at the time of closing.

(b) Counsel's Opinion. Buyer shall have received the opinion of Dennis J. Green, Esq., counsel for Seller, dated as of the closing as set forth in Exhibit G hereto.

(c) Sales Agreement. Contract No. 13812 between Seller and Company shall be binding upon Seller and there shall be no material default as to any obligation of the Company.

(d) Real Estate. The purchase and sale pursuant to the real estate agreement as set forth in Exhibit H attached hereto shall close simultaneously with the closing of the purchase and sale pursuant to the terms of this Agreement.

(e) Consents. All requisite consents and approvals of third parties required to be received by or on the part of Buyer or Seller identified in exhibits hereto for the consummation of the transactions contemplated hereby, or to prevent any agreement of Buyer or of Seller from terminating as a result of the performance by Buyer or Seller of its respective obligations under this Agreement, shall have been obtained.

Section 7. Conditions of Seller's Obligation. The following provisions, except to the extent waived in writing by Seller at its option, are conditions precedent to the obligations of Seller to close:

(a) Real Estate. The purchase and sale pursuant to the real estate agreement as set forth in Exhibit H attached hereto shall close simultaneously with the closing of the purchase and sale pursuant to the terms of this Agreement.

(b) Consents. All requisite consents and approvals of third parties required to be received by or on the part of Buyer or Seller identified in exhibits hereto for the consummation of the transactions contemplated hereby, or to prevent any agreement of Buyer or of Seller from terminating as a result of the performance by Buyer or Seller of its respective obligations under this Agreement, shall have been obtained.

(c) Share Purchase. The Company shall have obtained the financing for, and purchased 434 shares of its stock at the closing.

Section 8. Certain Remedies.

(a) Nash and Efficient Accounts. As an obligation of Seller which survives the closing, Seller shall pay to Buyer, against assignment and delivery to Seller of the uncollected amount, the amount by which the \$127,813.00 which Company is invoicing to Doug Nash Equipment and Engineering ("Nash") on the date of this Agreement shall exceed the total of any amounts collected within 90 days after the closing from Nash. Such payment, assignment and delivery



shall take place on May 23, 1982 as to any balance remaining on such date. Buyer shall cause Company to make a diligent effort, consistent with sound business practice to collect such amount. Failure to assign the balance of the Nash account promptly shall relieve Seller of its obligation hereunder. Company has entered into a contract with Efficient Energy Systems, Inc. ("Efficient"). Efficient is or will be indebted to Company in the approximate amount of \$99,000.00 pursuant to such contract. 90 days after closing, Buyer shall cause Company to elect to retain such contract with Efficient in which event Seller shall have no further liability under this Agreement with regard to such contract or Buyer shall elect to assign and deliver such contract and any associated tools and dies to Seller in which event Seller shall pay Company the balance of the indebtedness of Efficient to Company pursuant to the terms of such contract.

(b) Indemnification. As an obligation of Seller which survives the closing except for losses or costs which arise out of any misrepresentation or breach by Buyer of any representation or covenant given in the Agreement and except as otherwise provided in this Agreement, Seller shall reimburse Buyer to the extent of any loss or cost (whether involving payment or book adjustment) incurred by Buyer or the Company on account of:

(i) Liabilities of the Company (after deducting any income or the value of any benefits associated therewith to the Company or the Buyer) existing or arising out of any transaction entered into or state of facts existing prior to the closing (including without limitation, tax liabilities of the Company and the Group) to the extent not reflected or reserved against in full in the balance sheet included in the Financial Statements, not covered by insurance or not otherwise disclosed in this Agreement or any Exhibit hereto; provided Buyer, its employees and the Company's employees do not take any action or omit to take any action subsequent to the closing which results in such liability; and further provided that contractual commitments of Company entered into in the ordinary course of business, none of which will have a material adverse effect on the business or properties of Company, shall not be included under this subsection (i).

(ii) Any statement of fact in Section 4 not being correct, to the extent not covered by insurance; and

(iii) Out-of-pocket costs and expenses (including reasonable attorneys' fees) incident to all claims, actions, suits or other proceedings relating to any matter covered by the preceding subparagraphs (i) and (ii).

(c) Minimum Liability Required for Recovery. Any other provision of this Agreement to the contrary notwithstanding, Buyer agrees that Seller shall be obligated to make payments to and to reimburse Buyer under this Section only to the extent that the aggregate obligations of Seller to Buyer under part (b) of this Section 8, shall exceed the total of \$5,000 plus over-accrued liabilities shown on the Financial Statements, if any.

(d) Limitations on Liability. Any other provision in this Agreement to the contrary notwithstanding, it is agreed that:

(i) Seller shall not be obligated to Buyer under Section 8(b) unless a claim therefor is asserted by Buyer in writing within two years after the date of the closing; provided that in the case of tax liabilities such claim may be asserted in writing at any time prior to the expiration of the applicable statute of limitations relating to the Group as to such tax.

(ii) Under no circumstances shall Seller's obligations to Buyer under this Agreement, except as provided in Sections 14, 8(d)(iii) or 8(a), exceed in the aggregate the sum of \$500,000.

(iii) Except as otherwise provided in Sections 8(a) and 14 of this Agreement, Buyer's rights against Seller shall be limited to its rights under this Section 8 except in the case of fraud or intentional misrepresentation.

(e) In the event of any such loss, cost or claim, Buyer shall give Seller prompt written notice of such loss, cost or claim and allow Seller to fully participate in the defense and settlement of any such claim, at Seller's discretion. In the event of participation by Seller, the parties agree to fully cooperate in the vigorous defense of any such claim and each party shall bear its own costs of defending and settling such claims. No such claim will be settled without the joint written approval of Buyer and Seller. Failure to provide such notice shall be deemed a waiver by Buyer of its rights hereunder. Buyer shall have the option of turning the defense of any such claim over to Seller.

#### Section 9. Tax Benefits.

(a) Refunds. The parties agree that which entity is entitled to ultimately receive the benefit of a consolidated tax refund is a matter which is not addressed in the Internal Revenue Code and that Treasury Regulations provide that the common parent is the agent for each subsidiary in

an affiliated group. In the event that the Seller obtains a federal tax benefit as a result of (i) a carryback of any losses or credits or (ii) inclusion of the operations of Company in the consolidated return of the Group, in either case arising out of the operation of the business of the Company subsequent to December 26, 1981, the parties agree that such tax benefits received by Seller will be paid by Seller to Company. Seller agrees to cooperate with Company and to take such steps as are reasonably necessary at Buyer's expense (excluding salaries or wages of Seller's employees) to file claims for tax refunds based on post-acquisition operations of Company which result in (i) carry-backs against pre-acquisition taxable income produced by Company or (ii) offsets, if any, of Group taxable income by losses produced by Company in 1982 prior to the closing, if any, and that any refund or reduction of taxes and/or interest received by Seller resulting therefrom will, immediately upon receipt by Seller, be paid to Company.

(b) Tax Year. It is the intention of Buyer and Seller to file consolidated returns.

Section 10. Employees. Buyer and Seller have arranged for the continuation of benefits for non-union employees, excluding TRAESOP, for 60 days. Furthermore, the Buyer recognizes that the International Association of Machinists, AFLCIO is the certified bargaining agent for most of the hourly employees employed by the Company and recognizes the outstanding agreements between the Company and with such Union.

Section 11. 1981 Tax Payments. The Buyer shall cause the Company to promptly reimburse the Seller for any payments made by the Group as a result of the Company's operations for purposes of the consolidated return year ending December 26, 1981 to the extent (i) Company has made provision therefor in the Financial Statements and (ii) such payments have not already been made by Company.

Section 12. Post-Closing Cooperation. It is recognized that either party may need data and information relating to the Company subsequent to the closing in order to comply with the rules, regulations and requests of governmental organizations. The parties shall render reasonable cooperation to each other for such purpose. Seller shall provide the services of Messrs. Art Rodgers and William Rechkamier to Company for up to 3 weeks following the closing to aid in transition. Messrs. Rodgers and Rechkamier shall be under the direction and control of Company and the Seller shall have no responsibility or liability for their actions in connection with the operations of the Company during such period. Except for the

services of Messrs. Rodgers and Rechkemmer, the party requesting assistance from the other party shall bear all reasonable out-of-pocket costs and expenses incurred by such assisting party (excluding salaries or wages of its employees) and such assistance shall be subject to compliance by the requesting party with the assisting party's regulations regarding security.

Section 13. Corporate Purchase Contracts. In addition to the sales made by Company to Seller as a customer pursuant to Contract No. 13812 Seller purchases additional zinc and aluminum-base die casting products such as those produced by Company from other vendors pursuant to corporate sales agreements which have terms expiring at various times over the next four years. Seller agrees that for a period of four years following the closing, it will allow Company to bid competitively on all purchases made by it of such products not covered by Contract No. 13812 or by other outstanding sales agreements and to be considered and allowed to compete for such business under future sales agreements as the terms of such existing sales agreements expire.

Section 14. PCB's. The Company has received a Complaint and Notice of Opportunity for Hearing dated January 7, 1982 concerning alleged violations of the Toxic Substances Control Act arising out of alleged concentrations of PCB's within its die casting machines. The Company also received a letter dated November 28, 1975 from the Department of Natural Resources, State of Wisconsin, advising of an apparent violation of WPDES permit no. WI-0001465 and subsequently under letter dated December 10, 1975, the Company apprised the Department of the actions taken to correct any violation. The alleged violation of the Toxic Substances Control Act, the alleged violation of WPDES permit no. WI-0001465 as it relates to PCB's, and any violation of any law, rule or regulation in existence on the date of the closing arising out of the use by Company of PCB's prior to the closing shall be the obligation and responsibility of the Seller. Any personal injury claims against the Company or the Buyer arising out of the use by Company of PCB's prior to the closing shall remain the obligation and responsibility of the Seller as provided herein. Seller shall assume the defense and/or settlement of and/or pay all amounts necessary to resolve any such violations or personal injury claims. Buyer agrees that it and the Company will not use or knowingly introduce PCB's in the operations of the Company or on the property on which the Company's operations are conducted without the prior written consent of Seller, which shall not be unreasonably withheld, and Seller's obligation hereunder is conditional upon compliance with the foregoing agreement and Buyer's and the Company's compliance from and after the closing with laws, rules and

regulations relating to PCB's. Necessary decontamination and inspection costs required by law incurred as a result of the use by Company of PCB's prior to the closing will be paid by Company except that Seller agrees that any such reasonable and necessary decontamination and inspection costs incurred by the Company as a result of laws or governmental regulations in effect as of the closing in excess of \$12,000 relating to the property of the Company and the premises on which Company operates as of the date hereof shall be the obligation and responsibility of Seller provided, however, that Buyer agrees that Company will not incur any such costs in excess of \$12,000 before it has consulted with Seller concerning such costs. Seller's obligations under this Section 14 shall terminate on December 31, 1984 as to die casting machines and on December 31, 1989 as to other property except for claims asserted by Buyer in writing prior to such dates.

Section 15. Miscellaneous.

(a) Notices. All notices, requests, demands and other communications in connection with this Agreement shall be made in writing and shall be deemed to have been given when given personally to the person indicated below as authorized to receive the same by mail for Seller, or for Buyer, as the case may be, or if mailed, then 48 hours after mailing at any general or branch United States Post Office by registered or certified mail, postage prepaid, addressed if given to Seller, to:

General Counsel  
FISHER CONTROLS INTERNATIONAL, INC.  
P. O. Box 14755  
St. Louis, Missouri 63178

or if given to Buyer, to:

George J. Slyman  
ACCURATE DIE CASTING CO.  
3089 East 80th Street  
Cleveland, Ohio 44104

With a copy to:

Robert E. Glaser  
Arter & Hadden  
1144 Union Commerce Building  
Cleveland, Ohio 44115

or mailed to such other persons and/or addresses as Buyer or

sellers, respectively, may designate by notice given in like manner.

(b) Costs of Closing. Each party shall pay and bear its own expenses and fees incurred in connection with this Agreement and the transactions contemplated hereby and no such expenses or fees shall be paid by Company.

(c) Entire Agreement. Except for the letter agreement regarding indemnification dated February 19, 1982, this Agreement sets forth the entire understanding of the parties relating to the subject matter thereof and supersedes all prior agreements and understandings, whether oral or written. This Agreement shall not be modified, amended or terminated except by written agreement of all parties. Captions appearing in this Agreement are for convenience only and shall not be deemed to explain, limit, or amplify the provisions hereof.

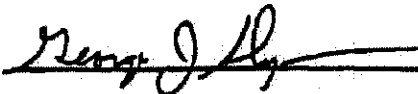
(d) Assignment. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.

(e) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

(f) Publicity. The parties agree that no publicity release or announcement concerning the transactions contemplated hereby shall be issued without the advance approval in form and substance by the parties.

IN WITNESS WHEREOF, Buyer and the Seller have executed this Agreement as of the day and year first above written.

SLYMAN INDUSTRIES, INC.

By 

FISHER CONTROLS INTERNATIONAL,  
INC.

By   
Vice President  
(Finance and Administration)

MILWAUKEE DIE CASTING COMPANY  
(A WHOLLY-OWNED SUBSIDIARY OF FISHER CONTROLS COMPANY)

13

BALANCE SHEET  
DECEMBER 26, 1981  
(In Thousands of Dollars)

ASSETS

Cash and Temporary Investments	\$ 348
Trade Accounts Receivable:	
Fisher Controls Company	476
Other (Net of Allowance for Doubtful Accounts of \$20)	445
Total Receivables	<u>921</u>
Inventory	
Raw Materials	75
Goods in Process	640
Less LIFO Reserve	(196)
Total Inventories (LIFO Basis)	<u>519</u>
Miscellaneous Assets	81
Total Current Assets	<u>1869</u>
Machinery and Equipment	3400
Less: Accumulated Depreciation	(2010)
	<u>1390</u>
<b>TOTAL ASSETS</b>	<b><u>\$3259</u></b>

LIABILITIES

Trade Accounts Payable	\$ 131
Current Income Tax Liability	31
Miscellaneous Liabilities & Accrued Expenses	271
Total Current Liabilities	<u>433</u>
Deferred Income Tax Liability	<u>155</u>
Total Liabilities	588
Shareholder's Equity	
Capital Stock	1
Capital in Excess of Par Value	2038
Retained Earnings	632
Total Shareholder's Equity	<u>2671</u>
<b>TOTAL LIABILITIES &amp; SHAREHOLDER'S EQUITY</b>	<b><u>\$3259</u></b>

MILWAUKEE DIE CASTING COMPANY  
 (A WHOLLY-OWNED SUBSIDIARY OF FISHER CONTROLS COMPANY)  
 STATEMENT OF INCOME AND RETAINED EARNINGS  
 FOR THE YEAR ENDED DECEMBER 26, 1981  
 (In Thousands of Dollars)

Sales	
Trade	\$3956
Fisher Controls Company	2729
Total Sales	<u>6685</u>
Cost of Sales	<u>5321</u>
Gross Profit	1364
Marketing, Administrative, & Technical Expenses	643
Other Income	<u>7</u>
Income Before Income Tax	728
Provision for Income Taxes	<u>385</u>
NET INCOME	<u>\$ 343</u>

Retained Earnings, Beginning of Year	3060
Add: Net Income	343
Less: Dividends	
Cash	2300
Other	<u>471</u>
Retained Earnings, End of Year	<u>\$ 632</u>



EXHIBIT B

1. Notes payable, mortgages, deeds of trust, pledges and other lien documents encumbering the assets of the Company and all security, loan or credit agreements to which the Company is a party or by which it is bound as guarantor.

None

2.

2.1 Bonus, incentive, deferred compensation, profit-sharing, retirement, insurance, disability benefit, death benefit or other benefit plans, trust agreements or arrangements for directors, officers and/or employees of the Company to which the Company is a party or by which it is bound:

- (a) Milwaukee Die Casting Company, Inc. Senior Pension Plan, as amended.
- (b) Senior Pension Plan Trust Agreement with The United States Trust Company of New York. This Agreement has been submitted to U. S. Trust Company for execution. Following the closing, the Company will have to instruct U. S. Trust Company as to the manner of investment and appoint three members to the Administrative Committee.
- (c) Milwaukee Die Casting Company Profit Sharing Retirement Plan.
- (d) Trust Agreement with The Marine Trust Company, N. A. covering the Milwaukee Die Casting Company Profit Sharing Retirement Plan
- (e) Milwaukee Die Casting Company, Inc. is a participant in Seller's Group Long Term Disability Insurance Policy No. GD 17974 with Bankers Life Company. Following the closing, the Company will be removed from this policy.
- (f) Milwaukee Die Casting Company, Inc. is a participating unit in Seller's Group Insurance Policy No. GA&S 10242A with Bankers Life Company (dental). Following the closing, the Company will be removed from this policy.
- (g) Fisher Controls Life Insurance Program under Policy No. 10242 for Salaried Employees with Bankers Life providing life, accidental death and dismemberment insurance. Non-union, full-time employees of Milwaukee Die Casting

Company, Inc. participate in this policy, but will be removed following the closing.

- (h) Blue Cross/Blue Shield Medicare Extended Policy 6765.1 for retirees.
- (i) Group insurance plans under policy CG0282555 with Connecticut General Life Insurance Company providing life, accidental death and dismemberment, disability income and medical expense insurance for union employees and medical expense insurance for salaried employees.
- (j) The HMO (Compcare Program) which Milwaukee Die Casting Company employees participate in on a voluntary basis as an option to the regular medical plan.
- (k) Various Company policies are in effect with respect to lay-offs, sexual harassment, holidays, nonsolicitation, and similar matters, copies of such policies having been delivered to Buyer.
- (l) The Company provides a non-insured initial three (3) month disability policy for salaried employees.
- (m) Workmen's Compensation and travel accident insurance are referenced in Exhibit F to the Agreement.

2.2 Collective bargaining agreements to which the Company is a party or by which it is bound:

Agreement with District No. 10, International Association of Machinists.

2.3 Employment agreements with directors, officers or employees to which the Company is a party or by which it is bound.

None

2.4 Sales representation agreements or arrangements to which the Company is a party or by which it is bound:

<u>Name</u>	<u>Office</u>	<u>Territory</u>
S. E. Gregory Co.	Chicago, Ill.	Illinois; also a 2.5% commission on sales to Teletype Company in Arkansas

<u>Name</u>	<u>Office</u>	<u>Territory</u>
RTS Sales Co.	Nashville, Tenn.	Tennessee N. Alabama
T. S. Kaminski & Co.	Indianapolis	Indiana Kentucky S. Ohio

2.5 Agreements or arrangements for professional services to which the Company is a party or by which it is bound other than agreements or arrangements for such professional services which are terminable at will by, and without liability (other than for services rendered to date of termination) to, the Company and agreements or arrangements with business consultants or business advisors, or for research, analysis or other special services to which the Company is a party or by which it is bound.

- (a) Mr. Art Rogers has been provided to the Company by Seller. The Company reimburses the Seller for his salary, overhead and a per diem of \$41.00/day and reimburses Mr. Rogers for his expenses directly or reimburses the Company. Mr. William Rechkenmier has also been provided to the Company by Seller. The Company reimburses the Seller for his salary, overhead and expenses.

(b) Service Arrangements

<u>Contract Party</u>	<u>Service</u>
Honeywell Merchants Police Protection Services	- alarm service contract
United Waste Systems	- daily trash pick-up
Wisconsin Tree Service	- lawn care
Terminex Pest Control	- rodent control
Wright-Kleen	- lavatory sanitation
Roto-Rooter Sewer Cleaners	- hauling of liquid wastes
Spic & Span	- shop towels and walk mats
Servomation	- food vending

<u>Contract Party</u>	<u>Service</u>
Simplex Time Recorder	- master time clock maintenance
Johnson Controls	- checking thermostats
Uranus	- window cleaning
International Business Machines	- servicing of typewriters and data processing products
Stewart Oxygen Service	- service and maintenance program
Merchants Police, Inc.	- guard service
Wisconsin Audio	- paging service

(c) Listing of Shop suppliers with whom Milwaukee Die Casting Company customarily conducts business generally pursuant to a blanket purchase order:

All Rubber Products	Lubricants
Allied Glove Co.	Menominee Rubber
American Cutting Tool	Milwaukee Recharging
American Fastener	Metal Lab
American Paper	Merwin Stoltz
Anderson Laboratories	Olsen Safety
Badger Plumbing	C. H. Peters
Blueprints	Ram Tool
Bell Wall Sales	Rundla Spence
Chem Trend	Superior Welding
Culligan Water	Siekert & Baum
Jordan Tool	Solvenite
DME Corp.	Shadbolt & Boyd
Economy Bushing	Tools & Abrasives
Eutectic Welding	Triplex Supply
Frantz Co.	Thunder Corp.
Gail Business	Wright Kleen
Great Lakes Packaging	Western Iron Stores
Good Steel	Spic & Span
Jac Mfg.	Badger Plumbing
Victory Opticians	Knapp Shoe Co.
	Branovan Shoe Co.

(d) International Business Machines Corporation -  
agreement for IBM Licensed Programs - Software for System 34.

(e) The gas company has the right to request the  
company to switch to stand-by fuel or to pay a premium.

(f) Contract with Dun & Bradstreet covering 50 response  
units - \$1,255.

(g) Agreement covering insertion of advertisement in  
"Thomas Register" - \$990.

(h) Agreement with Milwaukee Journal covering a  
discounted rate for ad placement based on a 1,000 line per year  
usage.

(i) Cost of printing Union contract - \$2,212.08

(j) Membership Investment Statement - Metropolitan  
Milwaukee Association of Commerce - \$497.

(k) Telephone credit cards held by Earl Suess and Duane  
Kartz and air travel card held by Earl Suess.

(l) Service arrangement with Coats Business Service,  
Inc. for cleaning, lubricating adjustments and service calls on  
ditto machines.

(m) Public telephone service with Wisconsin Telephone  
Company.

(n) Wisconsin Electric Power Company - outdoor  
lighting.

(o) Great Lakes Packaging for purchase and warehousing  
of shipping containers.

(p) ADT - watchmen's reporting service and fire alarm.

(q) Custom Design Systems, Inc. - systems design and  
computer programming.

(r) Tools and dies under contract to die houses in the  
area:

Sumstrand	\$55,560
Oster	22,000
Oster	3,500

IBM	63,555
Fisher Controls	10,735
Fisher Controls	15,045
Fisher Controls	12,667
Fisher Controls	37,250
Fisher Controls	4,100
Fisher Controls	19,650
Efficient Energy Systems	11,021
Efficient Energy Systems	15,270
Efficient Energy Systems	50,213
Efficient Energy Systems	11,309
Efficient Energy Systems	56,014
Efficient Energy Systems	28,000
Efficient Energy Systems	8,445
Doug Nash	131,800
Doug Nash	37,650
Doug Nash	28,650
Doug Nash	16,630
Doug Nash	23,150
Doug Nash	22,450
Doug Nash	21,990
Doug Nash	14,250
Doug Nash	21,200
Doug Nash	19,350
Doug Nash	36,900
Doug Nash	5,600
Fisher Controls	11,150
Fisher Controls	19,950
Fisher Controls	11,700
Fisher Controls	17,500
Fisher Controls	56,870
Fisher Controls	42,850
Fisher Controls	24,950
Cutler Hammer	2,000
Cutler Hammer	500
Square D	18,450
Square D	20,750
Barber Coleman	1,850

1. Leases of real or personal property for use by the Company or its assigns or sublessees), and all leases of real or personal property made by the Company as lessor:

- (a) International Business Machines Corporation - lease of IBM equipment (System 34 Computer)
- (b) Sharp copying machine and service
- (c) United States Leasing Corporation - Pitney Bowes mailing machine
- (d) See Section 2 as well

2. Licenses and other agreements for the use of any patent, copyright, trademark, tradename or trade secret or any other similar right (whether granted by or to the Company):

None

3. Agreements or commitments of the Company for the purchase of materials, supplies or services which may either involve future payments by the Company of more than Twenty Thousand Dollars (\$20,000.00) or contemplate performance extending three (3) months or more beyond the date hereof; and agreements or commitments by the Company for its sale of products, materials or services which may either involve an undelivered balance of such products or materials, or an unperformed balance of such services, having a sales price in excess of Ten Thousand Dollars (\$10,000.00) or contemplate performance extending three (3) months or more from the date hereof.

(a) Metal Commitments:

<u>Supplier</u>	<u>Quantity</u>	<u>Due or Delivered</u>
Imperial Metal	40,000# zinc	1/15/82
Midland	40,000# aluminum	1/19/82
Philips Bros.	40,000# aluminum	1/28/82
U. S. Reduction	30,000# aluminum	2/2/82
U. S. Reduction	11,000# aluminum	2/2/82
Imperial Smelting	15,000# zinc	2/2/82

<u>Supplier</u>	<u>Quantity</u>	<u>Due or Delivered</u>
Philips Bros.	40,000# aluminum	1/26/82
Allied Metal	40,000# aluminum	2/15/82
Alchem Aluminum, Inc.	40,000# aluminum	2/19/82

Imperial Smelting has reprocessed 55,156 lbs. of zinc at \$1.04/lb which is awaiting shipment and Spectro Alloys Corp. has reprocessed aluminum at approximate cost of \$1,607.00.

(b) Open Equipment Orders:

- . Transducer ordered from Tymac Controls Corp. - \$ 710.00
- . TCC 3000 data recorder and graphic plotter from Tymac Controls Corp. - \$15,940.00
- . Rebuilt #7 zinc die cast machine from ULSTRIP - \$ 8,000.00 (\$4,000 paid)
- . Design tap and drill fixture - Key Products - \$ 1,500.00 (approx.)

(c) Open Supply Orders:

- . 2,000 #25 cartons and 2,000 #25 partitions for Osterbase and 500 #300 partitions for Teletype from Great Lakes Packaging - \$5,455.10

(d) Sales agreements:

- . Purchase Contract with Fisher Controls Company, Inc. covering period January 1, 1982 to August 31, 1983.
- . The Orders Status Report as of February 17, 1982 is attached and a current Status Report as of the closing will be available at the Company. Customers can cancel or defer their orders at any time. Orders can be received for delivery earlier than normal lead time and Company makes every effort to deliver.



EXHIBIT C

PATENTS AND OTHER PROTECTED RIGHTS

Trademark registration, No. 405,481, for "Pressure Die Castings of Aluminum Base Alloys, Zinc Base Alloys, and Lead Base Alloys in the Form of Completed Parts for Articles of Manufacture but Requiring Subsequent Trimming and/or Machining", in old U. S. Class 14. The mark was registered on February 1, 1944 and renewed.

MDC 000398

EXHIBIT D

A grievance was filed because the Company had a maintenance man working in the plant during a shut-down and no union representative was in the plant.

On December 23, 1981, The Bankers Life requested from Mr. Carl F. Forster, a former employee, information regarding his Social Security award and advised him that the minimum benefit of \$50.00 was being discontinued.

See Section 14 of the Agreement.

E. A. Doyle Mfg. Corp. of Sheboygan, Wisconsin contends the Company is indebted to it for machine tool rebuilding and has offered to settle the matter for \$17,022.

On November 13, 1981, the Hartford Steam Boiler Inspection and Insurance Company inspected the W. T. Bir., Thermo-Pak No. WIS B27027 and deficiencies were noted in letter dated November 25, 1981.

Square D has requested \$2,994 plus \$1.76 for each of 307 pieces which were machined by Square D. The Company claims Square D is only entitled to \$1.76 each piece.

The Company agreed with the City of Milwaukee to move its LP Gas Storage Stations in the event the owner of the property north of the Company's lot line commits to building closer than 20 feet of such line. See letter dated March 7, 1977.

There is the possibility of a loss to the Company arising out of agreement with Doug Nash Equipment and Engineering and Efficient Energy Systems, Inc. Amounts are currently overdue.

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Dies and tooling within the possession of the Company are owned by the Company's customers.

---

State Unemployment Compensation Tax rate for the Company is expected to increase due to heavy usage in 1981.

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Monsanto Company's Safety and Protection group recommended in September, 1981, a number of changes in operations based on an August 21, 1981 survey.

---

Robert Nelson has approached the Company on February 8, 1982 about obtaining medical attention for a finger which was injured on February 2, 1977. Insurance carriers have been notified.

2

EXHIBIT E

The following salary increases are all to be effective February 1, 1982 and are being processed in the normal course of business:

<u>EMPLOYEE</u>	<u>ANNUAL SALARY</u>	
	<u>FROM</u>	<u>TO</u>
Sally O'Neill	\$12,036	\$13,240
Isobel Paterson	12,468	13,715
Bea Schuette	12,264	13,368
Gladys Bulski	18,331	20,072
Mike Matthews	28,587	31,589

Increases for union employees are in accordance with the union contract. In addition, Agnes Lasky's hourly rate was increased by \$0.25/hour effective January 11, 1982 (\$6.95 to \$7.20/hour), and Robert Taylor's hourly rate was increased from \$9.05 to \$9.60 effective February 22, 1982, having completed 6,240 hours of apprenticeship training.

See also Exhibit B.

MDC 000401

3

EXHIBIT F

INSURANCE

Summary of the coverages provided by the IRI Policy No. 31-8-13147  
re: 4132 North Holton Street and 4134 North Hubbard Street,  
Milwaukee, Wisconsin:

100% Physical Damage	Buildings	\$ 2,510,000
Replacement Cost Values	Machinery	8,676,000
	Inventory	<u>1,100,000</u>
	TOTAL	\$12,286,000

100% Business Interruption Values: \$ 3,500,000

Fire Perils: Fire, EC, VMM, SL

Boiler and Machinery Perils: Comprehensive Form

Workmen's Compensation insurance is provided under INA Policy  
RSC-C17247803 with Monsanto Company.

Travel Accident insurance is provided under American Home Assurance  
Company Policy GTT-9002237 with Monsanto Company.

All of the foregoing coverage will terminate at the closing.

Also see Exhibit B to the Agreement for additional insurance  
reference.

MDC 000402

19  
EXHIBIT G

[Letterhead]

Slyman Industries, Inc.

Gentlemen:

I have acted as counsel for Fisher Controls International, Inc., a Delaware corporation (the "Seller") in connection with the Purchase Agreement - Common Shares dated February 19, 1982 between the Seller and you, pursuant to which the Seller is selling all of the capital stock of Milwaukee Die Casting Company, Inc. (the "Company") to you and the Purchase Agreement dated February 19, 1982 between the Seller and Theresa A. Slyman pursuant to which the Seller is selling real estate in Milwaukee County, Wisconsin to Theresa A. Slyman (collectively referred to herein as the "Agreements"). This opinion is furnished to you in accordance with Section 6(b) of the Purchase Agreement - Common Shares.

In connection with the foregoing, I have examined the Agreements and the documents to be delivered thereunder by the Seller, together with such other corporate documents and records and matters of law as I have deemed relevant and necessary under the circumstances as the basis for the opinions expressed herein.

Based upon the foregoing, I am of the opinion except as described below that:

(a) The Company and Seller are corporations duly organized, validly existing and in good standing under the laws of the state of Delaware, and have full corporate power and authority to conduct their business as now conducted and to own and to operate their assets, properties and business;

(b) The Company is qualified as a foreign corporation and is in good standing in the state of Wisconsin;

(c) The Agreements and each of the instruments and documents to be delivered by the Seller thereunder have been duly authorized, executed and delivered by the Seller and constitute the legal, valid and binding obligation of the

MDC 000403

CONFIDENTIAL

Seller, enforceable against the Seller in accordance with their terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally. Except for the civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act, I have no personal knowledge after inquiry of any actions, claims, suits, proceedings or investigations, either administrative or judicial, pending or threatened, by, against or relating to the Company;

(d) The execution, delivery, consummation and performance of the Agreements by the Seller does not and will not conflict with or result in a breach or violation of any term or provision of or constitute default under or result in the creation of any lien, charge or encumbrance upon any assets or properties of the Seller or Company pursuant to their Certificates of Incorporation, By-Laws, or any order, writ, injunction or decree of any court or any governmental agency or body to which the Company or Seller is subject.

(e) The Company has authorized capital stock consisting of 1000 common shares of which 66 common shares are issued and outstanding, all of which are fully paid and nonassessable. } c

No opinion is expressed herein as to the legality or validity of the purchase of 434 common shares by the Company prior to the closing of the Agreements.

Yours truly,

CONFIDENTIAL

MDC 000404

F



PURCHASE AGREEMENT

THIS AGREEMENT made and entered into this 23rd day of February 1982, by and between FISHER CONTROLS INTERNATIONAL, INC., a Delaware corporation, located at P. O. Box 14755, St. Louis, Missouri 63178 ("Seller"), and THERESA A. SLYMAN, [REDACTED] ("Buyer"),

WITNESSES:

A. RECITALS

1. WHEREAS, Seller is the owner in fee simple of two parcels of real property, located in the County of Milwaukee, State of Wisconsin and more fully described in Exhibits A.1. and A.2., attached hereto and made a part hereof;

2. WHEREAS, Seller desires to sell and Buyer desires to buy such parcels of real property, together with all of Seller's rights, privileges and appurtenances thereto, all of Seller's rights of way and easements benefiting such parcels, and all of Seller's improvements, buildings and fixtures located thereon, which parcels, rights, privileges and appurtenances, rights of way and easements, and improvements, buildings and fixtures are herein sometimes collectively referred to as the "Premises,"

MDC 000405

3. WHEREAS, Buyer has ordered a survey (the "Survey") to be made of the Premises for use by Buyer, which will show (a) the exact boundary lines of the Premises, (b) the location on the Premises of all improvements, roadways, railroad sidings, water courses, utilities and utility connections, rights of way and easements, (c) the location on the Premises of that portion of any neighboring buildings, fences or other improvements which encroach upon the Premises and (d) the location of any improvements on the Premises which encroach on any adjoining property or on any property which is subject to any easement or right of way in favor of another party; and

4. WHEREAS, Seller and SLYMAN INDUSTRIES, INC., a Delaware corporation ("Industries"), have entered an agreement of even date herewith, by the terms of which, contemporaneously with the closing of the transaction contemplated by this Purchase Agreement, Seller will sell and Industries will purchase all of the issued and outstanding shares of Milwaukee Die Casting Company, Inc. (the "Subsidiary").

5. AGREEMENTS

NOW THEREFORE, in consideration of the mutual promises and upon and subject to the terms and conditions contained herein it is agreed between Seller and Buyer as follows:

1. Sale of Premises

Seller shall sell, transfer and convey to Buyer,

and Buyer shall purchase and take from Seller, in accordance with paragraph 4 below, the Premises at and as of the Closing (as defined in paragraph 3 below). The Premises shall be sold and accepted on an "AS IS, WHERE IS" basis as of the Closing.

2. Purchase Price

The purchase price to be paid by Buyer to Seller shall be One Million Four Hundred Seventy-Five Thousand Dollars (\$1,475,000) for the parcel described on Exhibit A-1 and Twenty-Five Thousand Dollars (\$25,000) for the parcel described on Exhibit A-2, for a total of One Million Five Hundred Thousand Dollars (\$1,500,000.00), which amount shall be delivered to Seller at the Closing by bank wire transfer of immediately available funds at a bank acceptable to Seller or by such other means as may be agreed upon in writing by Buyer and Seller prior to Closing.

3. Closing

The consummation of the sale and purchase of the Premises (the "Closing") shall be effected on February 23, 1982, at 1144 Union Commerce Building, Cleveland, Ohio 44115 at 10:00 a.m., or at such other time, date and/or place as Buyer and Seller may agree upon in writing.

4. Title

In the event this transaction is to be consummated, title to the real property portion of the Premises shall be transferred to Buyer or his nominee by deeds (the

"Deeds") in the Form of Exhibits A-1 and A-2 attached hereto.

5. Representations and Warranties

Seller hereby makes the following representations and warranties, each of which are true and correct at the time of execution hereof, shall be true at and as of the Closing and shall not be merged in the Deeds but shall survive the delivery of the Deeds to Buyer and their filing for record; Buyer shall not be deemed to have waived his rights under any of such representations and warranties by reason of any independent investigation made by him or on his behalf:

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of Delaware, and has full power and authority to enter into this Purchase Agreement and to convey and transfer the Premises in accordance with the terms hereof.

(b) This Purchase Agreement constitutes the valid, binding and enforceable obligation of Seller, and this Purchase Agreement and the consummation of the transaction contemplated hereby have been duly authorized by all requisite corporate action on behalf of Seller.

(c) The performance of this Purchase Agreement and the consummation of the transaction contemplated hereby will not result in the breach of any provision of, or constitute a default under, the Articles of Incorporation.

tion or By Laws of Seller, or any contract, indenture, mortgage, undertaking or any other agreement or instrument to which Seller is subject or to which the Premises are subject due to action of Seller, its predecessor in title, Fisher Controls Company, Inc. or the Subsidiary taken during their respective periods of ownership of the Premises. There are no law suits presently pending, nor have any law suits been threatened, except as set forth in Exhibit B.5.(c), which would affect the Premises or Seller's ability to carry out its obligations under this Purchase Agreement.

(d) Except for (i) the easements listed and the arrangements described on Exhibit B.5.(d), attached hereto and made a part hereof, (ii) zoning regulations, (iii) deed restrictions, easements and rights of way of record and (iv) matters disclosed by the Survey, there are no leases, licenses or occupancy agreements of any kind or nature which give a right to any person, corporation, partnership or other entity to occupy or use in any manner whatsoever all or any part of the Premises.

(e) There are not presently pending any condemnation actions with respect to the Premises, nor has Seller received any notices of any being contemplated.

(f) No work has been performed at the request of Seller, Fisher Controls Company, Inc., or the Subsidiary on the Premises which could give rise to the filing

of a mechanic's lien against the Premises subsequent to the Closing; and Seller agrees to indemnify and hold Buyer harmless from and against any and all losses, claims, damages or liabilities to which Buyer may become subject insofar as same arise out of or are based upon the placing of any such lien against the Premises due to actions of Seller, Fisher Controls Company, Inc., or the Subsidiary.

6. Condition Precedent to Closing - Buyer

It is a condition precedent to the obligation of Buyer to close under this Purchase Agreement:

(a) That all of the representations and warranties of Seller set forth in Paragraph 5 shall be true at and as of the Closing with the same effect as though such representations and warranties were made at and as of such time.

(b) That at the Closing the purchase and sale of the shares of the Subsidiary is consummated.

(c) That Seller shall have fulfilled all covenants to be performed by it hereunder.

(d) That Guardian Title and Guaranty Agency, Inc. (the "Title Company") is willing at the Closing, to issue its Title Insurance Policy in the full amount of the purchase price, insuring that upon filing of the Deeds, record title to the Premises shall be in Buyer or his nominee, in fee simple, free and clear of all

liens and encumbrances except those which are set forth in Exhibit B.6.(e).

In the event that any one or more of such conditions precedent fails to occur by the Closing, Buyer shall have the option to either waive same and consummate the purchase of the Premises in accordance with the terms of this Purchase Agreement or to terminate this Purchase Agreement, in which event same shall be null and void and of no further force and effect, Seller and Buyer shall have no further obligations to one another hereunder and all funds and documents held by the Title Company shall be returned to the party which deposited same. Seller will pay all title and survey costs theretofore accrued if this Purchase Agreement is terminated as a result of the failure of condition precedent (a) or (d) above. The consummation of the purchase shall be deemed a waiver of such conditions precedent but shall not affect the survival of such representations and warranties as provided in paragraph 5.

**7. Condition Precedent to Closing - Seller**

It is a condition precedent to the obligation of Seller to close under this Purchase Agreement:

- (a) That at the Closing the purchase and sale of the shares of the Subsidiary is consummated; and
- (b) That Buyer shall have fulfilled all covenants to be performed by him hereunder.

In the event that any one or both of such

conditions precedent fails to occur by the Closing, Seller shall have the option to either waive same and consummate the purchase of the Premises in accordance with the terms of this Purchase Agreement or to terminate this Purchase Agreement, in which event same shall be null and void and of no further force and effect, Seller and Buyer shall have no further obligations to one another hereunder and all funds and documents held by the Title Company shall be returned to the party which deposited same. Buyer will pay all title and survey costs theretofore accrued if this Purchase Agreement is terminated as a result of the failure of condition precedent (a) or (b) above. The consummation of the purchase shall be deemed a waiver of such conditions precedent but shall not affect the survival of such representations and warranties as provided in paragraph 5.

8. Insurance.

Seller shall maintain in full force and effect to the Closing Seller's property and casualty insurance policies which currently cover the Premises.

9. Prorations and Expenses

Real estate taxes and assessments, both general and special, shall be prorated between Seller and Buyer as of Closing. The proration of taxes and assessments shall be based on the last available duplicate; provided that if the duplicate once received by Buyer shows a different tax or assessment for the period covered, the parties shall



immediately reproporate the taxes and/or assessments. Following receipt of the actual bills for taxes and assessments, Buyer agrees to pay the same. Buyer will pay for any real property conveyance fees and transfer taxes. Seller will pay up to \$5,000 toward the cost of the title insurance policy. Each party shall pay one-half of the fee of the Title Company for filing the Deeds and making the prorations.

10. Binding Effect

All of the terms and provisions of this Purchase Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.

11. Notices

All notices, requests, demands and other communications in connection with this Purchase Agreement shall be made in writing and shall be deemed to have been given when given personally to the person indicated below as authorized to receive the same by mail for Seller, or for Buyer, as the case may be, or if mailed, then 48 hours after mailing at any general or branch United States Post Office by registered or certified mail, postage prepaid, addressed if given to Seller, to:

General Counsel  
FISHER CONTROLS INTERNATIONAL, INC.  
P. O. Box 14755  
St. Louis, Missouri 63178

or if given to Buyer, to:

Theresa A. Slyman  
[REDACTED]

With a copy to:

Robert E. Glaser  
Arter & Hadden  
1144 Union Commerce Building  
Cleveland, Ohio 44115

or if mailed to such other persons and/or addresses as Buyer or Seller, respectively, may designate by notice given in like manner.

12. Counterparts

This Purchase Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. Entire Agreement

This Purchase Agreement sets forth the entire understanding between the parties, there being no terms, conditions, warranties or representations other than those contained herein, and no amendments hereto shall be valid unless made in writing and signed by the parties hereto.

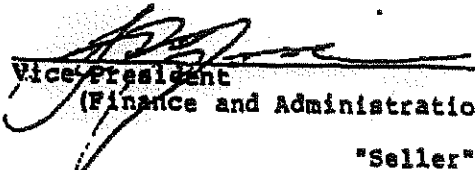
14. Local Law

This Purchase Agreement shall be controlled, construed, and enforced in accordance with the laws of the State of Wisconsin.

MDC 000414

IN WITNESS WHEREOF, the parties have duly executed this  
purchase Agreement the day and year first above written.

FISHER CONTROLS INTERNATIONAL, INC.

By  DR  
Vice President  
(Finance and Administration)  
"Seller"

  
THERESA A. SLYMAN  
"Buyer"

MOC 000415

EXHIBIT A-1

## SPECIAL WARRANTY DEED

This Indenture, effective the 23rd day of February, 1982, between Fisher Controls International, Inc., a Delaware corporation, Grantor, party of the first part, and Theresa A. Slyman, Grantee, party of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of One Million Four Hundred Seventy-Five Thousand Dollars (\$1,475,000) to it in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted and sold, and by these presents does grant and sell unto the said party of the second part, his heirs and assigns the following described real estate situated in the County of Milwaukee and State of Wisconsin, to-wit:

That the part of Government Lot 4 in the SW 1/4 of Fractional Section 4, T 7 N, R 22 E, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at a point which is 855.00 ft. North of the South line and 660.00 ft. East of the West line of said SW 1/4; thence East on a line which is 855.00 ft. North of and parallel with the South line of said 1/4 Section 380.50 ft. to a point in the West line of the Westerly right of way conveying to the Chicago, Milwaukee and St. Paul Railway Company by deed recorded in the Office of the Register of Deeds of Milwaukee County in Volume 822 on Page 227; thence North along said West line of said right of way 465.00 ft. to the North line of said Lot 4; thence West on

MDC 000416

SUBJECT to zoning regulations, deed restrictions, easements and rights-of-way of record and to any state of facts, easements or matters which a correct survey or inspection of the premises would show.

IN WITNESS WHEREOF, the said party of the first part  
hereunto set its hand and seal the day and year first above  
written.

By Vice President  
(Finance and Administration)

signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Printed or Typewritten Name

\_\_\_\_\_  
Printed or Typewritten Name

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF MISSOURI    )  
                          ) SS:  
ST. LOUIS COUNTY     )

Personally came before me, this 19th day of February,  
A.D., 1982, the above-named \_\_\_\_\_,  
\_\_\_\_\_ of Fisher Controls International,  
Inc., to me known to be the person who executed the  
foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Printed or Typewritten Name  
Notary Public

My Commission expires:  
\_\_\_\_\_ A.D., 19\_\_.

This instrument was drafted by Dennis J. Green.

24.

EXHIBIT A-2

SPECIAL WARRANTY DEED

This Indenture, effective the 23rd day of February, 1982, between Fisher Controls International, Inc., a Delaware corporation, Grantor, party of the first part, and Theresa A. Slyman, Grantee, party of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of Twenty-Five Thousand Dollars (\$25,000) to it in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted and sold, and by these presents does grant and sell unto the said party of the second part, his heirs and assigns the following described real estate situated in the County of Milwaukee and State of Wisconsin, to-wit:

Lots numbered Twenty-six (26), Twenty-seven (27), Twenty-eight (28) and the South Nine (9) east of Lot numbered Twenty-nine (29) in Block numbered One (1) in Jos. Buchta's Subdivision of Lots numbered Ninety-two (92), Ninety-three (93), One Hundred and Three (103) and One Hundred and Four (104), in Comstock & Williams Subdivision of Lots numbered One (1), Two (2), Three (3), Four (4) and Five (5) of Section numbered Five (5) and the Southeast One-quarter (1/4) of Section numbered Five (5) and the Northwest One Quarter (1/4) of Section numbered Four (4) in Township numbered Seven (7) North of Range numbered Twenty-two (22) East, in the City of Glendale.

MDC 000419

SUBJECT to zoning regulations, deed restrictions, easements and rights-of-way of record and to any state of facts, easements or matters which a correct survey or inspection of the premises would show.

And the said party of the first part does hereby warrant the title to said land, and will defend the same against the lawful claims of all persons claiming by, through or under it or by, through or under its predecessors in title, Fisher Controls Company, Inc., a Delaware corporation, and Milwaukee Die Casting Company, Inc., a Delaware corporation, but against none other and not otherwise.

IN WITNESS WHEREOF, the said party of the first part hereunto set its hand and seal the day and year first above written.

FISHER CONTROLS INTERNATIONAL, INC.

[Seal]

By \_\_\_\_\_  
Vice President  
(Finance and Administration)

Signed, sealed and delivered  
in the presence of

\_\_\_\_\_  
Printed or Typewritten Name

MDC 000420



\_\_\_\_\_  
Printed or Typewritten Name

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF MISSOURI     )  
                          ) SS:  
ST. LOUIS COUNTY     )

Personally came before me, this 19th day of February,  
A.D., 1982, the above-named \_\_\_\_\_,  
\_\_\_\_\_ of Fisher Controls International,  
Inc., to me known to be the person who executed the  
foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Printed or Typewritten Name  
Notary Public

My Commission expires:  
\_\_\_\_\_ A.D., 19\_\_.

This instrument was drafted by Dennis J. Green.

MDC 000421

25  
EXHIBIT B.5.(c) TO PURCHASE AGREEMENT

Under letter dated January 7, 1982, the Company was sent a complaint and Notice of Opportunity for Hearing concerning alleged violations of the Toxic Substances Control Act.

MDC 000422

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EXHIBIT B.5.(d) TO PURCHASE AGREEMENT

26

1. Rights and easements, if any, in and to any and all railroad switches, sidetracks, spur tracks and rights of way located upon or appurtenant to the subject premises.
2. Encroachment upon the subject premises, etc. as disclosed by deed 4892648.
3. Rights of the public in that portion of the within described premises lying within the limits of public roads and public rights of way.
4. Encroachment upon the premises to the maximum extent of .9 feet by railroad ties appurtenant to the premises on the East as disclosed by survey number 114146-S dated December 23, 1974 by Kenneth E. Berke, surveyor.
5. Encroachment upon the premises to the maximum extent of .1 feet by walk appurtenant to the premises on the West as disclosed by survey number 114146-S dated December 23, 1974 by Kenneth E. Berke, surveyor.

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Access to the Premises granted to the following firms providing services to the Company:

Badger Plumbing (snow removal)  
Merchant's Police  
Imperial Smelting and Spectro Alloys (metal tolling)  
Servomation (food service)  
Sharpe (copying machine repair)  
U. S. Postal service  
IBM (machine repair and maintenance)  
Simplex (time recorder repair and maintenance)  
Utility company personnel  
UPS  
ABC Lock (repair door locks)  
Balco Metals (to pick up aluminum dross)  
Blue and Koepsell (office machine repair)  
Culligan  
Donahue and Associates (coolant sampling)  
Eurectic Welding (weld rods and supplies)  
Terminex (pest control)  
Uranus (window washing)

MOC 000423

Wisconsin Tree Service (lawn care)  
Hawk Industrial (refine furnaces)  
Honeywell (alarm service)  
ADT (watchman, clocks and fire alarms)  
Industrial Scale Service  
M. Lukas Company (furnace repairs)  
United Waste (refuse disposal)  
Metal Lab (heat treating services)  
Paul Reilly Company (dock repair)  
Solvanite (heat treating services)  
Jac Manufacturing (instrument repair)  
Wright Kleen (restroom sanitizing)  
Spic and Span (glove and towel laundering)  
Milwaukee Recharge (fire extinguish service)  
Hugh Ayers (fork truck repair)  
Kiwanis (bubblegum machines)  
Roto-Rooter

EXHIBIT B.6.(e) TO PURCHASE AGREEMENT  
COMMITMENT FOR TITLE INSURANCE NO.

27

SCHEDULE B — Section 2

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

Standard Exceptions:

- (a) Any statutory lien, or right to such lien, for labor, materials, services, fuel or machinery heretofore or hereafter furnished and not shown by the public records.
- (b) Any encroachments, easements, party walls or other facts which are not shown by the public records but which would be disclosed by an accurate survey or by an inspection of the land.
- (c) Rights or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
- (d) Roads, ways, streams, easements, or claims thereof, which are not shown by the public records.
- (e) The lien of any special taxes or assessments not certified to the county auditor as of the date hereof.

3. The lien of all general taxes for the year 1981 and thereafter.

4. Utility easement, granted by Milwaukee Die Casting Company to Wisconsin Electric Power Company, its successors and assigns, by an instrument dated March 8, 1951 and recorded on April 6, 1951, in Volume 2866 of Deeds on Page 419, as Document No. 3016362. (copy attached)

5. Utility easement, granted by Milwaukee Die Casting Company to Wisconsin Electric Power Company, its successors and assigns, by an instrument dated October 5, 1951 and recorded on November 14, 1951, in Volume 2951 of Deeds on Page 604, as Document No. 3068975. (copy attached)

6. Mortgage from Milwaukee Die Casting Company to Marine National Exchange Bank of Milwaukee, in the originally stated amount of \$300,000.00, dated March 14, 1968 and recorded on March 14, 1968, Reel 408, Images 978 to 980 inclusive, as Document No. 4378264.

7. Easement contained in Quit Claim Deed executed by Milwaukee Cement Railway Company, Milwaukee Cement Company and Erwin C. Uihlein to Chicago, Milwaukee and St. Paul Railway Company, by an instrument dated February 2, 1920 and recorded on February 25, 1920, in Volume 822 of Deeds on Page 227, as Document No. 1020524. (copy attached)

8. Rights and easements, if any, in and to any and all railroad switches, sidetrack, spur tracks and rights of way located upon or appurtenant to the subject premises.

9. Encroachment upon the subject premises, etc. as disclosed by deed 4892648. (cc attached)

10. Taxes and assessments, general or special, for the year 1981 are paid.

MDC 000426

## SPECIAL WARRANTY DEED

This Indenture, effective the 13rd day of February, 1982, between Fisher Controls International, Inc., a Delaware corporation, Grantor, party of the first part, and Theresa A. Slyman, Grantee, party of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of One Million Four Hundred Seventy-Five Thousand Dollars (\$1,475,000) to it in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted and sold, and by these presents does grant and sell unto the said party of the second part, her heirs and assigns the following described real estate situated in the County of Milwaukee and State of Wisconsin, to-wit:

That part of Government Lot 4 in the SW 1/4 of Fractional Section 4, T 7 N, R 22 E, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at a point which is 835.00 ft. North of the South line and 660.00 ft. East of the West line of said SW 1/4; thence East on a line which is 835.00 ft. North of and parallel with the South line of said 1/4 Section 380.38 ft. to a point in the West line of the Westerly right of way conveying to the Chicago, Milwaukee and St. Paul Railway Company by deed recorded in the Office of the Registrar of Deeds of Milwaukee County in Volume 822 on Page 227; thence North along said West line of said right of way 465.00 ft. to the North line of said Lot 4; thence West on said North line 380.38 ft. to a point 660.00 ft. East of the West line of said SW 1/4; thence South on a line 660.00 ft. East of and parallel with said West line 465.00 ft. to the point of beginning, excepting the West 33.00 ft. for street purposes.

SUBJECT TO zoning regulations, deed restrictions, easements and rights-of-way of record and to any state of facts, easements or matters which a correct survey or inspection of the premises would show.

MOC 000427

And the said party of the first part does hereby warrant the title to said land, and will defend the same against the lawful claims of all persons claiming by, through or under it, or by, through or under its predecessors in title, Fisher Controls Company, Inc., a Delaware corporation, and Milwaukee Die Casting Company, Inc., a Delaware corporation, but against none other and not otherwise.

IN WITNESS WHEREOF, the said party of the first part hereunto set its hand and seal the day and year first above written.

FISHER CONTROLS INTERNATIONAL, INC.

By *S. L. Pylipow* (Seal)  
Vice President,  
Finance and Administration

Signed, sealed and delivered  
in the presence of

*Shirley A. Hendricks*  
*Shirley A. Hendricks*  
Printed or Typewritten Name

*Margaret M. Graham*  
*Margaret M. Graham*  
Printed or Typewritten Name

ATTEST:

*D. J. Green*  
Dennis J. Green  
Secretary

STATE OF MISSOURI )  
                          ) ss  
COUNTY OF ST. LOUIS )

Personally came before me, this 19th day of February, A.D., 1982, the above named S. L. Pylipow, Vice President, Finance and Administration of Fisher Controls International, Inc., to me

MDC 000428



known to be the person who executed the foregoing instrument and  
acknowledged the same.

*Susan Pierce Keck*

SUSAN PIERCE KECK  
Printed or Typewritten Name  
Notary Public

My Commission expires OCT. 8  
A.D., 1973

This instrument was drafted by Dennis J. Green.

NDC 000429

## SPECIAL WARRANTY DEED

This indenture, effective the 23rd day of February, 1982, between Fisher Controls International, Inc., a Delaware corporation, Grantor, party of the first part, and Theresa A. Flynn, Grantee, party of the second part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of Twenty-Five Thousand Dollars (\$25,000) to it in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted and sold, and by these presents does grant and sell unto the said party of the second part, her heirs and assigns the following described real estate situated in the County of Milwaukee and State of Wisconsin, to-wit:

Lots numbered Twenty-six (26), Twenty-seven (27), Twenty-eight (28) and the South Half (S) part of Lot numbered Twenty-nine (29) in Block numbered One (1) in Joe. Bacht's Subdivision of Lots numbered Ninety-two (92), Ninety-three (93), One Hundred and Three (103) and One Hundred and Four (104), in Comstock & Williams Subdivision of Lots numbered One (1), Two (2), Three (3), Four (4) and Five (5) of Section numbered Five (5) and the Southeast One-quarter (1/4) of Section numbered Five (5) and the Northwest One Quarter (1/4) of Section numbered Four (4) in Township numbered Seven (7) North, of Range numbered Twenty-two (22) East, in the City of Glendale.

SUBJECT TO zoning regulations, deed restrictions, assessments and rights-of-way of record and to any state of facts, assessments or matters which a correct survey or inspection of the premises would show.

And the said party of the first part does hereby warrant the title to said land, and will defend the same against the lawful

NOC 000430

claims of all persons claiming by, through or under it, or by, through or under its predecessors in title, Fisher Controls Company, Inc., a Delaware corporation, and Milwaukee Die Casting Company, Inc., a Delaware corporation, but against none other and not otherwise.

IN WITNESS WHEREOF, the said party of the first part hereto set its hand and seal the day and year first above written.

FISHER CONTROLS INTERNATIONAL, INC.

By *[Signature]* (Seal)  
Vice President,  
Finance and Administration

Signed, sealed and delivered  
in the presence of

*Shirley A. Hurdman*

*Shirley A. Hurdman*  
Printed or Typewritten Name

*Marjorie M. Hudson*

*Marjorie M. Hudson*  
Printed or Typewritten Name

ATTEST:

*[Signature]*  
Dorothy J. Green  
Secretary

STATE OF MISSOURI )  
                              ) SS  
COUNTY OF ST. LOUIS )

Personally came before me, this 19th day of February, A.D., 1982, the above named E. E. Tyllipow, Vice President, Finance and

MDC 000431

Administration of Fisher Controls International, Inc., to me  
known to be the person who executed the foregoing instrument and  
acknowledged the same.

*Susan Pierce Keck*

SUSAN PIERCE KECK

Printed or Typewritten Name  
Notary Public

My Commission expires OCT. 8  
A.D., 1983

This instrument was drafted by Dennis J. Green.

MDC 000432

G

N/A - if  
closing  
occurs  
upon  
signing

tion, or otherwise pertaining to the business and affairs, of the Company. From the date hereof, Sellers shall use their best efforts to cause the independent certified public accountants of the Company to cooperate with Buyer and its independent certified public accountants in making available for examination all financial information concerning the Company as is requested, including the work papers pertaining to audits or examinations of the Company made by such accountants. Unless and until the purchase contemplated herein is consummated, Buyer and its representatives will hold in confidence all information obtained pursuant to this Section 6(a), and if such purchase is not consummated, Buyer will return to the Company all such information as the Company may reasonably require.

DTTD

(b) Preservation of Business Organization. Seller shall cause the Company to use its best efforts to preserve its business organization intact and to preserve for Buyer the goodwill of the suppliers, customers and others having business relations with the Company. (del) (insert) W. (del) (insert) W.

DTTD  
(and action  
agrees  
in any  
event)

(c) Continued Accuracy of Statements of Fact. Prior to the closing Seller will use his best efforts to so conduct its affairs, and to cause the Company to use its best efforts so as not to cause, or suffer to occur, any event or state of facts which would make untrue any statement of fact contained in Section 4 when repeated at the time of the closing and made to speak as of that date (instead of the date of this Agreement) except that Company may renew any insurance policy presently carried and between the date of this Agreement and the time of the closing the Company may have opportunities to make agreements or commitments for the purchase of materials, supplies or services, or for the sale of products, materials or services which, if entered into, would be agreements required to be listed on Exhibit A and the Company, during such period, may make such agreements as required by the ordinary course of business provided that written notice of each such action is at the time given to Buyer by the Company. For purposes of construing the statements of fact in Section 4 as of the time of the closing as herein required by Sections 7(a) and 7(b), Exhibit A shall be deemed amended to include such agreements of which notice has thus been given to Buyer; and further, Exhibit D shall be deemed amended to include any additional insurance coverage obtained pursuant to Section 6(c). Should any event or state of facts not specifically provided for in the preceding provisions of this Section 6(c) occur prior to the closing which will make inaccurate the statements of fact contained in Section 4 when repeated at the time of the closing and make speak as of that date,

NDC 000155

appropriate amendments of such statements of fact (including appropriate amendments of Exhibits therein referred to) may be made for the purpose of construing such statements of fact in Section 4 as of the time of the closing as herein required by Sections 7(a) and 7(b), if at or prior to the closing Buyer is notified in writing by any Seller of such amendment and approves the same, but if such amendment represents a change of facts which Buyer does not approve, Buyer's sole remedy will be to cancel this Agreement.

(d) ~~Compliance with Conditions.~~ Sellers shall use its best efforts to cause the ~~conditions to Buyer's obligations set forth in Section 7~~ to be satisfied at the time of closing.

Section 7. Conditions of Buyer's Obligation. The following provisions, except to the extent waived in writing by Buyer at its option, are conditions precedent to the obligations of Buyer to close:

N/A, IF  
Selling &  
Closing  
occur simultaneously

(a) Continued Accuracy of Statements of Facts. All statements of fact in Section 4 in all material respects are true and correct as of the date hereof and shall be true and correct at the time of the closing when repeated and made to speak as of the time of the closing (meaning that all references therein to the "date of this Agreement" or the "date hereof" shall be construed as references to the date of the closing).

(b) Seller's Certificate. Buyer shall have received a certificate, dated as of the date of the closing, signed by the Seller in which it represents and warrants to Buyer that to the best of its knowledge: (i) All statements of fact set forth in Section 4 in all material respects were true and correct as of the date of this Agreement and are true and correct when repeated and made to speak as of the time of the closing; (ii) no action or proceeding has been instituted, or to its knowledge threatened, against the Seller or Company for the purpose or with the probable effect of enjoining or preventing the consummation of this Agreement, and (iii) it has performed the agreements herein to be performed by it, and the Company has performed those matters contemplated herein to be performed by it, prior to the closing.

(c) Performance of Agreements. All agreements to be performed hereunder by Seller, and all matters contemplated herein to be performed by the Company, at or prior to the closing, shall have been fully performed.

MDC 000156

(d) Management. Seller shall have delivered to Buyer, except as otherwise requested in writing by Buyer at least three days prior to the closing, the written resignations of all directors as directors and officers of the Company, to be effective in each case at the time of closing.

(e) No Casualty Damage. None of the assets owned by the Company used in its normal business operations shall have been damaged or destroyed by fire, storm or other casualty (i) so as to involve costs of more than \$10,000 in excess of insurance proceeds payable to the Company on account thereof for repair or replacement of such assets, or (ii) so as to cause an interruption of normal business operations by the Company, as the case may be, for a period of more than ten days (except that this part (ii) shall not apply if such interruption of normal business operations beyond said period is covered by business interruption insurance payable to the Company in an amount at least approximately equal to revenue to be lost).

(f) No Actions or Proceedings. No action, suit or proceeding, including but not limited to any such action, suit or proceeding brought or to be brought pursuant to any state or federal antitrust law, shall be pending or, to the knowledge of Seller or Buyer, threatened, before any court or governmental body to restrain or prohibit, or to obtain damages or a discovery order in respect of, this Agreement or the consummation of the transactions contemplated hereby or which has had or may have, in the sole judgment of Buyer, a materially adverse effect on the business.

(g) Counsel's Opinion. Buyer shall have received the opinion of Dennis J. Green, Esq., counsel for Seller, dated as of the closing as set forth in Exhibit ~~E~~ hereto.

(h) Sales Agreement. The manufacturing and sales agreement between Seller and Company as set forth in Exhibit ~~F~~ attached hereto shall be binding upon Seller and there shall be no material default as to any obligation of the Company.

(i) Real Estate. The purchase and sale pursuant to the real estate agreement as set forth in Exhibit ~~G~~ attached hereto shall close simultaneously with the closing of the purchase and sale pursuant to the terms of this Agreement.

(j) Consents. All requisite consents and approvals of third parties required to be received by or on the part of Buyer or Seller for the consummation of the transactions

*identified in Exhibits hereto*



contemplated hereby, or to prevent any agreement of Buyer or of Seller from terminating as a result of the performance by Buyer or Seller of its respective obligations under this Agreement, shall have been obtained.

Section 8. Conditions of Seller's Obligation. The following provisions, except to the extent waived in writing by Seller at its option, are conditions precedent to the obligations of Seller to close:

(a) Continued Accuracy of Statements of Fact. All statements of fact in Section 6 in all material respects are true and correct as of the date hereof and shall be true and correct at the time of the closing as if repeated and made to speak as of the time of the closing.

(b) No Actions or Proceedings. No action or proceedings shall be instituted or threatened for the purpose or with the probable effect of enjoining or preventing the consummation of this Agreement.

(c) Performance. All agreements to be performed hereunder by Buyer at or prior to the closing shall have been fully performed.

(d) No Actions or Proceedings. (same as 7(f))

(e) Real Estate (Same as 7(c))

Section 9. Certain Remedies.

(f) Consents (Same as 7(d))

(a) Non-Collectible Accounts Receivable. As an obligation of Seller which survives the closing, Seller shall pay to Buyer, against delivery to Seller of the uncollected accounts receivable in question, the amount by which the uncollected balance on December 31, 1982 (net of all prior returns and allowances reducing the amount of the particular accounts receivable) of those accounts receivable shown on the books of the Company as of December 31, 1981 and selected by Buyer to be subject to this Section shall exceed the total of any amounts collected after the closing on accounts receivable of the Company which have heretofore been charged off as uncollectible; provided, however, that Buyer's rights to payment from Seller under this provision shall be subject to Buyer having made a diligent effort, consistent with its normal business practices but which shall include such additional billing, follow-up and collection effort as the Company has heretofore done with respect to its operations, to collect the uncollected balance of the accounts receivable to be delivered to Seller as aforesaid; and provided further, that the Seller shall not be required to pay to Buyer any amount referable to any account receivable with respect to which Buyer (without the Seller's prior consent given after the closing) varied the terms of pay-

H

ARTER & HADDEN

IN WASHINGTON  
ARTER & HADDEN  
1015 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20006  
USGS 657-0900  
TELEX 88 7422  
INTL. TELEX 346536

1100 NINTH STREET BUILDING  
CLEVELAND, OHIO 44115  
CIN 686-1800  
TELEX 88 2384  
TELECOPIER (216) 686-2645

IN COLUMBUS  
KNEPPER WHITE ARTER & HADDEN  
150 EAST BROAD STREET, FOURTH FLOOR  
COLUMBUS, OHIO 43215  
(614) 221-2125

REPLY TO: Cleveland

February 1, 1984

FEB 06 1984

General Counsel  
Fisher Controls  
International, Inc.  
P. O. Box 14755  
St. Louis, Missouri 63178

Dear Sir:

This letter is being sent to you on behalf of Slyman Industries, Inc. ("Buyer"), pursuant to the notice requirements of Section 15 of the Purchase Agreement - Common Shares, dated February 23, 1982 (date of "closing") between Buyer and your company relating to your sale of the shares of Milwaukee Die Casting Company, Inc. ("Company"), now known as Accurate Die Casting Co. ("Accurate Die").

This Notice is given to you at this time to give you notice of and assert claims under Sections 14 and 8 of the Agreement described.

The purpose of this notice and claim relates to the state of facts existing prior to the Agreement and those facts in existence on the date of the closing arising out of the use by the Company of PCB's prior to the closing. We are assured by those persons who have continued to operate the facilities of the Company since the date of the closing that they have records establishing that they have not used any form of PCB's. In that regard, OSHA Form 20 from all suppliers are available and will be made available to you for inspection. None of them show any PCB's.

Enclosed is a confidential report of recent tests performed at the facilities, some of which you may be able to relate to a test report you obtained in December, 1981. This report indicates there are 13 areas of concern. On the third page, lab number 9553 relates to the testing of a sewer under machine 21 and lab numbers 9519-22 are the results of samples taken from the soil at the facility immediately behind the building. We are told by employees that years ago oil from the machines was dumped at the facility behind the factory. In view of those positive results, 12 more tests have been ordered at other outside areas of the facility.

MDC 000344

General Counsel  
Fisher Controls International, Inc.  
February 1, 1984  
Page 2

While this notice relates to the presence of PCB's at the facility resulting from their use prior to the closing of the Agreement, we do not intend to limit this notice to the report included herewith. We do include any area of PCB's at the facility, including but not limited to the contents of the machines and presses, any pit holes, reservoirs or spills under the machines, the capped sewer between the plant and the Milwaukee River and such other parts of the premises used by the Company.

Current inquiry by the Accurate Die operating people at the facility indicates that as a partial start on the cleanup of the PCB's, testing is required at a cost of \$20,000 and then a plan for the cleanup would be prepared and estimated prior to a contract. Accordingly, we have good reason to believe the cost of this clean-up will exceed the amount provided in the Agreement to be paid by the Buyer.

Under the circumstances, we believe there was a violation of law and regulations in existence on the date of the closing arising out of the use by the Company of the PCB's prior to the closing and request that you undertake to clear and resolve any such violations and any personal injury claims which may arise from such use. In this regard, we refer you to the Toxic Substances Control Act, 15 U.S.C. § 261 et seq., The Federal Water Pollution Control Act (Clean Water Act), as amended 33 U.S.C. § 1321 et seq., Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. and similar statutes of the State of Wisconsin.

Please be assured that the Accurate Die operators at the facility will cooperate with you in an effort to carry out an orderly cleanup of the facility. Please advise us as to the role you would like to take in this matter since we believe that a spirit of friendly cooperation will best dispose of this problem for each of us. In your handling of this request, please contact my partner, Clay Mock, who will be responsible for this matter.

Sincerely yours,

ARTER & HADDEN



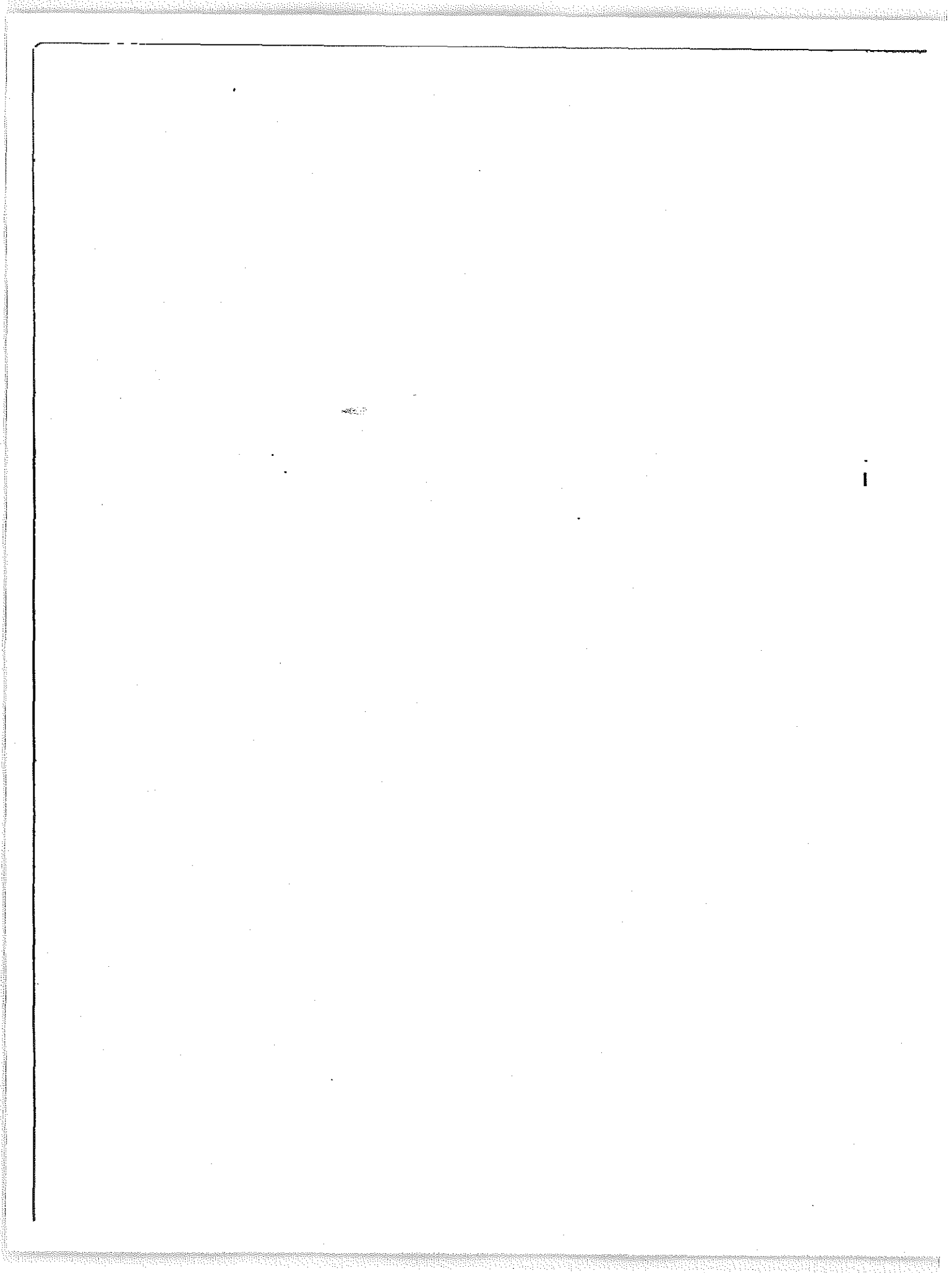
Robert E. Glaser

REG:CM:cl

cc: Mr. George Slyman  
Mr. Robert Auer  
Mr. Robert Kitzman

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED No. P310 463 480

MDC 000345



ARTER & HADDEN

IN WASHINGTON  
ARTER & HADDEN  
1916 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20006  
(202) 837-0880  
TELEX 88 7422  
INTEL TELEX 348826

1100 HUNTINGTON BUILDING  
CLEVELAND, OHIO 44115  
(216) 896-1100  
TELEX 66 2384  
TELECOMPAR (216) 896-2648

IN COLUMBUS  
KNEPPER WHITE ARTER & HADDEN  
180 EAST BROAD STREET, FOURTH FLOOR  
COLUMBUS, OHIO 43215  
(614) 221-2185

REPLY TO: Cleveland

February 9, 1984

FEB 14 1984

General Counsel  
Dennis J. Green  
Fisher Controls International, Inc.  
8000 Maryland Avenue  
P. O. Box 14755  
St. Louis, Missouri 63178

Gentlemen:

Thank you for your letter of February 6, 1984 acknowledging receipt of our letter of February 1, 1984 constituting Notice given to you and asserting claims under Section 14 and 8 of the Agreement between your company and Slyman Industries, Inc.

Pursuant to your request, we enclose additional copies of the reports of tests submitted on December 5, 1983 by Accurate Die Casting Company.

Enclosed also is the report of tests submitted on December 15, 1981 by Milwaukee Die Casting which your company had submitted to Slyman Industries prior to its purchase from you under the Agreement of February 23, 1982. Also enclosed for your ease of reference are copies of five letters written in the last half of 1975 by the Department of Natural Resources, State of Wisconsin to, and the replies from Milwaukee Die Casting Company. These also were supplied by your company prior to the Agreement of February 23, 1982.

Our letter of February 1, 1984 specifically points out the concern of Slyman Industries as to the finding of PCB's used by your subsidiary prior to February 23, 1982 and the letter and test report of December 5, 1983 specifically identifies seven machines and six specific areas where residual PCB's are found. The request of Slyman Industries Inc. contained in our letter of February 1, 1984 does of course relate to the general language of its Agreement of February 23, 1982 with you and your undertaking

MDC 000346

General Counsel  
Fisher Controls International, Inc.  
February 9, 1984  
Page Two

with respect to facts in existence on the date of the closing, with specific reference to the use of PCB's by your subsidiary, Milwaukee Die Casting Company, Inc. With respect to the areas now identified as containing residual PCB's, Slyman Industries requests that Fisher Controls International, Inc. undertake to clean up those identified areas of concern or acknowledge that it will reimburse Slyman Industries, Inc. and/or Accurate Die Casting Company for the costs to be incurred.

Consequently your advice as to what role you would like to take in this matter will be appreciated.

Sincerely yours,

  
Clay Mock

CM:cl

Enclosures

cc: George Slyman

MDC 000347

# Donohue

Accurate Die Casting Company  
4132 North Holton Street  
Milwaukee, WI 53212  
Attn: Mr. Richard Kurth

Project Number: 62722.150  
Received in Lab: 12/5/83  
Collection Date: Submitted  
by client

## PCB ANALYSIS

Lab Number	Sample Identification	PCB, ng/l (Arochlor 1242)
9523	#3 DCM	less than 5
9524	#5 DCM	less than 5
9525	#6 DCM	less than 5
9526	#7 DCM	less than 5
9527	#10 DCM	less than 5
9528	#11 DCM	31
9529	#12 DCM	less than 5
9530	#13 DCM	less than 5
9531	#14 DCM	less than 5
9532	#15 DCM	less than 5
9533	#16 DCM	less than 5
9534	#17 DCM	less than 5
9535	#18 DCM	less than 5
9536	#19 DCM	less than 5
9537	#21 DCM	30

Analyses performed in accordance with procedures approved by the U.S. Environmental Protection Agency.

Donohue Analytical, Inc.  
4738 North 40th Street  
Shaboygan, Wisconsin 53081  
Analytical & Field Services  
414 454 8711

Manager James C. Bird

Project Manager

Date 12/23/83

MDC 000348



# Donohue

Project Number:

Received in Lab:

Collection Date:

Accurate Die Coating Company

## PCB ANALYSIS

Lab Number	Sample Identification	PCB, mg/l (Arochlor 1242)
9538	#22 DCN	less than 5
9539	#23 DCN	less than 5
9540	#24 DCN	less than 5
9541	#26 DCN	23
9542	#30 DCN	22
9543	#3 press	less than 5
9544	#104 press	32
9545	#110 press	25
9546	#111 press	21
9547	#118 press	less than 5
9548	#119 press	less than 5
9549	#120 press	less than 5
9550	#122 press	less than 5
9551	#129 press	less than 5
9552	#130 press	less than 5

Analyses performed in accordance with procedures approved by the U.S. Environmental Protection Agency.

Donohue Analytical, Inc.  
4738 North 40th Street  
Sheboygan, Wisconsin 53081  
Analytical & Field Services  
414-458-8711

Manager James C. Bil

Project Manager

12/23/83

Date

MDC 000349

Donohue

Accurate Die Casting Company

Project Number:

Received in Lab:

Collection Date:

PCB ANALYSIS

<u>Lab Number</u>	<u>Sample Identification</u>	<u>PCB, mg/l (Arochlor 1242)</u>
9553	Mach #21	55
9554	Degreaser Sewer	7
9555	Roto Sewer	less than 5

		<u>PCB, mg/kg (Arochlor 1242)</u>
9519	Area 1	400
9520	Area 2	75
9521	Area 3	2800
9522	Area 4	1100

Analyses performed in accordance with procedures approved by the U.S. Environmental Protection Agency.

Donohue Analytical, Inc.  
4738 North 40th Street  
Sheboygan, Wisconsin 53081  
Analytical & Field Services  
414 458-8711

Manager *James C. Birl*

Project Manager \_\_\_\_\_

12/23/83

Date

MDC 000350

# Donohue

## ANALYTICAL SERVICES

Project Number: 12215.000

Received in Lab: 12/15/81

Collection Date: Submitted by Client

Milwaukee Die Casting  
4132 North Holton Street  
Milwaukee, WI 53211

Attn: Mr. Earl Sues

30 33 < 75 - 50

per owner 2525<sup>2</sup>  
Liquor Hough 1984 -  
N 3yo.

Sample PCB 1242 (mg/l)

Sample PCB 1242 (mg/l)

#3 10

#24 <10

#5 <10

#25 10

#6 45 <

#26 <10

#10 <10

#29 <10

#11 <20

#30 <10

#12 <10

#104 <10

#13 <10

#110 <10

#15 <10

#111 10

#16 40 <

#118 <10

#17 <10

#119 <10

#18 <10

#120 <10

#19 <10

#121 <10

#20 <10

#122 <10

#21 25

#128 10

#22 <10

#129 5

#23 <10

#130 <10

Analyses performed in accordance with procedures approved by the U.S. Environmental Protection Agency.

Donohue & Associates, Inc.  
4738 North 40th Street  
Sheboygan, Wisconsin 53081  
Engineers & Architects  
414 458 8711

Manager

Project Coordinator

Date

MDC 000351



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

L. P. Vargo  
Secretary

July 17, 1975

Box 450  
MADISON, WISCONSIN 53701

IN REPLY REFER TO: 3210-3

Mr. J. C. Wheeler  
General Manager  
Milwaukee Die Casting Company  
4132 N. Holton Street  
Milwaukee, Wisconsin 53211

Dear Mr. Wheeler:

The Wisconsin Department of Natural Resources is conducting a program to reduce and, where possible, eliminate discharges of polychlorinated biphenyls (PCBs) to the waters of the state. The PCBs are of special concern because they can be concentrated by fish in excess of the 5 ppm tolerance level established by the Food and Drug Administration for fish sold for human consumption. Many fish in Green Bay, Lake Michigan, the Upper Mississippi River and the Fox River near Portage have been found to exceed the 5 ppm tolerance level for PCBs.

We are presently testing effluents of foundries for PCBs. This testing program has shown that effluents from foundries commonly contain PCBs. Testing has also shown that PCBs are only partially removed at municipal wastewater treatment plants.

Department testing of your facility's discharge to the Milwaukee River on April 4, 1975 revealed the presence of 53.0 ppb PCBs. A representative of the Department will be visiting your facility again to take a second effluent sample for PCB analysis to confirm the results of the first testing.

At this time we are requesting you to identify and eliminate if possible the source of the PCB discharge within your facilities. The common sources of PCBs are transformer and capacitor fluids, heat exchange fluids, hydraulic fluids, and cutting oils. You should check with your suppliers to determine if PCBs are present in products used at your facility which may ultimately reach the effluent.

Substances found to be the cause of the PCB discharge should be closely controlled to prevent losses to the plant effluent or replaced with products free of PCBs. Discarded substances containing PCBs should be disposed by high temperature incineration at more than 2000°F to destroy the PCBs. High temperature incineration services are available through private contractors and the Department will provide more specific information concerning disposal if needed.

It is essential that the sources of PCBs be identified within your facilities so that appropriate abatement actions can be considered and initiated. We believe the specific sources of PCB discharge from your company can be determined within 30 days. You are requested to reply to this letter within 30 days, indicating the source of PCBs as determined by our plant inspection and contacts with suppliers, and the steps which will be taken to abate the sources of PCB discharge.

The Department of Natural Resources will hold public hearings to consider the PCB problem on August 28, 1973 in Madison. I have attached the public hearing notice for your review should you wish to attend.

Sincerely,  
Bureau of Water Quality

  
Stanton J. Kleinert, Chief  
Surveillance Section

Attachment  
SJK:mm  
cc: B. Schultz, SD

MDC 000353

August 22, 1975

Mr. Stanton J. Kleinert, Chief  
Surveillance Section  
Department of Natural Resources  
State of Wisconsin  
P. O. Box 450  
Madison, Wisconsin 53701

Dear Mr. Kleinert:

Please refer to your letter of July 17, 1975 under the reference 3210-3 with regard to your department's program to reduce the discharge of PCBs to the waters of the state.

You indicated your department had tested our facilities discharged to the Milwaukee River on April 4, 1975 and that this test reveal the presence of 53.0 ppb PCBs. We were visited again sometime ago by representatives of your department who took effluent samples for PCB analysis to confirm, as you indicated in your letter, the results of the first testing. As of this date, we have not heard the results of the second sampling and, if you have this information available in your department, we certainly would appreciate hearing the results.

You requested in your letter that we endeavor to identify and eliminate if possible the source of the PCB discharge within our facility. We are endeavoring to do this and thus have been advised by the manufacturer of our hydraulic fluid, Monsanto Industrial Chemicals Company, that their Pydraul Industrial Fluid does not contain any PCBs as components of their fluid. We have further been advised by the supplier of our cutting and lubricating oils, Lubricants, Inc., that their products do not contain any PCBs. We are checking further with other suppliers to try to determine whether or not the coolants or the mold releases we purchase have any PCBs in their content. However, our plant will be closed for the entire month of August, two weeks for annual vacation and the additional two weeks due to lack of business, so we will not be in a position to continue this effort until our return to work on September 2nd. I hope you will bear with us during this period

MDC 000354

August 22, 1965  
Mr. Stanton J. Kleinert, Chief  
Department of Natural Resources  
Madison, Wisconsin

and grant us the additional time to hear from the remaining suppliers of the corelants and mold releases.

If you have any questions, I certainly will be happy to discuss them with you and, as mentioned above, we will be interested in hearing the results of the second sample your representative took from our facility.

Very truly yours, .

MILWAUKEE DIE CASTING COMPANY INC.

J. C. Wheeler  
General Manager

JCW:jmb

MDC 000355



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

L. P. Veig  
Secretary

August 27, 1975

BOX 430  
MADISON, WISCONSIN 53701

IN REPLY REFER TO: 3210-3

Mr. J. C. Wheeler, General Manager  
Milwaukee Die Casting Company, Inc.  
4132 W. Holton Street  
P. O. Box 5592  
Milwaukee, Wisconsin 53211

Dear Mr. Wheeler:

Thank you for your letter of August 22, 1975. Our first test of your facility's discharge to the Milwaukee River on April 4, 1975 revealed the presence of 53.0 ppb PCBs. Our second testing on July 28, 1975 revealed the presence of 11.5 ppb PCBs.

Your letter states that checks with suppliers have indicated PCBs are not present in the products mentioned. Our July testing shows PCBs are still present in the effluent, however. I would, therefore, suggest you submit a sample of your hydraulic fluid to a testing laboratory for PCB analysis. Hydraulic fluids have been associated with PCB discharges from foundries. Although the fluid presently being used may not contain PCBs, PCB residuals from fluids previously used may still reside in the hydraulic fluid system at your facility. Heat exchange fluids should also be checked if used at your facility.

We will look forward to hearing from you again on this matter.

Sincerely,  
Bureau of Water Quality

  
Stanton J. Kleinert, Chief  
Surveillance Section

SJK:jm  
cc: B. Schultz, S.E. District





State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

L. P. Verge  
Secretary

November 28, 1975

BOX 450  
MADISON, WISCONSIN 53701

IN REPLY REFER TO: 3220  
NOTIFICATION OF NONCOMPLIANCE  
WPDES Permit No. WI-0001465

Mr. John C. Wheeler, General Manager  
Milwaukee Die Casting Company  
4132 North Holton Street  
Milwaukee, Wisconsin 53211

511  
766-0498  
BEERHARDT  
ASST. Dir.  
J.E. Scholtz  
Dir.  
DNR.

Dear Mr. Wheeler:

This letter concerns an apparent violation of the above referenced WPDES permit issued to the Milwaukee Die Casting Company. The violation was identified by a USEPA compliance monitoring survey conducted at your facility on April 30, 1975 and verified by district personnel in an inspection conducted on October 21, 1975.

Both EPA and district findings concluded that high concentrations of oil and grease were present in the discharge from outfall number 001. Specifically, the EPA survey noted an oil and grease concentration of 17.9 mg/l on April 30, 1975. Analysis of three grab samples taken by district personnel at 10:00 a.m., 11:00 a.m. and 12:00 noon on October 21, 1975 indicated oil and grease concentrations of 2 mg/l, 140 mg/l and 9 mg/l respectively.

Apparently, effluent from outfall 001 is not in compliance with permit conditions requiring the discharge to be "limited solely to noncontact cooling water free from process and other wastewater discharges." Consequently, a responsible company representative is hereby requested to inform the Department of the nature of these violations and of the corrective measures anticipated. Please make arrangements, within ten (10) days of the date of this letter, for the representative to meet with Mr. Paul Didier, Chief, Industrial Wastewater Section, for discussion of this situation. He may be contacted at 608-256-0289.

Sincerely,  
Division of Enforcement

Andrew C. Damon  
Acting Administrator

cc: Division of Environmental Standards - II  
Southeast District  
Mr. Clarence Oster

→ Mr. Earl Suess

THIS IS 100% RECYCLED PAPER

MDC 000357

December 10, 1975

State of Wisconsin  
Department of Natural Resources  
Box 450  
Madison, Wisconsin 53701

Attn: Mr. Andrew C. Damon

Subject: Notification of Noncompliance  
WPDES Permit No. WI-0001465, Reference No. 3220

Dear Mr. Damon:

We are in receipt of your letter of November 28, 1975 concerning an apparent violation of the above WPDES permit.

Mr. Paul Didier was contacted on December 2, 1975 for discussion of the violation and what we will do to correct it.

We have one floor drain in the entire plant that is connected to the storm sewer system. All plant personnel were told not to dispose of anything in this one drain. It is quite apparent from your findings that the situation cannot be controlled by depending on people to refrain from using this one drain.

We have contacted a local licensed plumber to close the floor drain permanently. The work will be completed by December 19, 1975. The sealing of the one floor drain should put us in compliance with our permit conditions.

If you have any questions regarding the above, please contact the writer.

Very truly yours,

MILWAUKEE DIE CASTING COMPANY, INC.

CC: Mr. Bernard Schultz  
Ass't. Director  
S.E. District  
Milwaukee, Wis.

Earl Suesse  
Manager of Manufacturing

MDC 000358

J

PHOCION S. PARK  
ATTORNEY AT LAW  
800 NORTH LINCOLN BOULEVARD  
ST. LOUIS, MISSOURI 63106

February 17, 1984

Mr. Clay Mock  
Arter & Hadden  
1100 Huntington Building  
Cleveland, Ohio 44115

Dear Mr. Mock:

Mr. Dennis J. Green, General Counsel of Fisher Controls International, Inc., has retained me with respect to the matter raised in your February 9, 1984 letter to him.

Attached to that letter were copies of correspondence between Milwaukee Die Casting Company and the State of Wisconsin concerning PCB. Also attached were copies of analytical reports indicating PCB concentrations in a number of samples. At no point did your letter indicate that the low concentrations of PCB in the samples reflect any hazard to health or the environment, or represent any violation of law.

Merely presence of PCB at low concentrations in the environment is not necessarily a violation of law or regulation, nor an indication of any hazard. Depending upon the locations at which the samples were taken, it is possible that the best course of action might be to leave the situation as it is. If there is a particular concern with respect to any of the sites at which samples were taken, please provide detailed information as to the basis for that concern, and the reasons why it is felt that any additional action should be taken.

Thank you for your cooperation in this matter.

Yours very truly,

*Phocion S. Park*

Phocion S. Park

jf

✓cc: D. J. Green

MOC 000359

K

1                   IN THE UNITED STATES DISTRICT COURT  
2                   EASTERN DISTRICT OF WISCONSIN  
3       MILWAUKEE DIE CASTING CO.,  
4       SLYMAN INDUSTRIES, INC.  
5       and THERESA A. SLYMAN,  
6                   Plaintiffs,  
7                   vs.   Case No.  
8       FISHER CONTROLS                                       93 C 0325  
9       INTERNATIONAL, INC.,  
10                  Defendant.  
11   - - - - -  
12                  Deposition of CLAY MOCK, a Witness  
13       called by the Defendant for examination under the  
14       Applicable Rules of Federal Civil Procedure,  
15       taken before me, Steven H. Henschel, a Registered  
16       Professional Reporter and Notary Public in and  
17       for the State of Ohio, pursuant to notice and  
18       stipulations of counsel, at the offices of Arter  
19       & Hadden, 1100 Huntington Building, Cleveland,  
20       Ohio, on Wednesday, November 9, 1994, at 3:30  
21       o'clock p.m.

22   - - - - -  
23  
24  
25   ORIGINAL

1 as I could.

2 Q. And do you think you succeeded?

3 A. Time will tell.

4 Q. Reading it now is there any area of  
5 the notice -- I'm sorry, is there any area that  
6 is not included within the notice?

7 A. I find no -- I didn't mean to exclude  
8 any of the areas because they had not tested all  
9 the areas yet.

10 Q. And you were making this clear in  
11 this notice that whether or not a test had been  
12 taken in a given location, the potential for  
13 contamination at that location was to be included  
14 within the notice?

15 A. It was a broad notice to put the  
16 recipient on watch that claims could be made.

17 Q. And then in the next paragraph you  
18 write that, "Testing is required at a cost of  
19 \$20,000 and then a plan for the cleanup would be  
20 prepared and estimated prior to a contract.  
21 Accordingly we have good reason to believe that  
22 the cost of this cleanup will exceed the amount  
23 provided in the agreement to be paid by the  
24 buyer." End of quote.

25 Had you reached a conclusion that a

1 Q. I take it it didn't work?

2 A. I listened to him.

3 Q. But you didn't believe him?

4 A. It was not up to me whether to  
5 believe him or not. We had a claim in  
6 litigation.

7 Q. It was your understanding this claim  
8 was in litigation at the time?

9 A. A claim that was going to be in  
10 litigation and the claim is made, we had to make  
11 it within the certain length of time by reason of  
12 the contract and I had done that. So we were  
13 putting him on notice of a claim that could go  
14 into litigation.

15 Q. And the claim covered every inch the  
16 property of the Milwaukee Die Casting Company  
17 plant?

18 A. It was broad enough to include such  
19 things as may yet be found upon a detailed  
20 discovery.

21 Q. And did Milwaukee Die Casting do a  
22 detailed investigation?

23 A. I don't know.

24 Q. Could you find Exhibit 11 over there  
25 again. Why don't you take a look at that again.



MILWAUKEE DIE CASTING CO. V. FISHER CONTROLS INTERNATIONAL, INC.  
AND MONSANTO COMPANY

U.S. District Court - Eastern District of Wisconsin  
Case No. 93-C-0325

<u>DATE</u>	<u>TITLE</u>	<u>TAB</u>
11/07/94	Defendant Fisher Controls International, Inc.'s Responses to Plaintiffs' First Request for Documents	38
11/07/94	Defendant Fisher Controls International, Inc.'s Responses to Plaintiffs' First Set of Interrogatories	39
11/11/94	Plaintiffs' Disclosure of Expert Witnesses (Charles Zeal)	40
11/11/94	Plaintiffs' Disclosure of Expert Witness Robert W. Parsons)	41
12/05/94	Notice of Deposition (Plaintiff will take the deposition of defendant, Fisher Controls International, Inc. on December 20, 1994)	42
12/06/94	Notice of Disposition (Defendant, Fisher Controls International shall take the deposition of Earl Suess on December 13, 1994)	43
12/09/94	Subpoena - Amended Notice of Deposition (Monsanto Company's deposition will be taken on December 21, 1994)	44
12/15/94	Responses of Fisher Controls International to Plaintiffs' Rule 30(b)(6) Notice of Deposition	45
12/21/94	Notice of Oral Examinations Under Rule 30(b) (Oral Examination will be taken of: Kenneth Worzalla, Willie Means and Patrick Lee on December 29, 1994)	46
12/22/94	Fisher Controls International, Inc.'s Response to Plaintiffs' Motion for Leave to Amend Complaint	47
12/22/94	Declaration of Robert B. Ellis in Support of Fisher Controls International, Inc.'s Response to Plaintiff's Motion for Leave to Amend Complaint	48
12/22/94	Declaration of Andrew R. Running in Support of Fisher Controls International, Inc.'s Response to Plaintiffs' Motion for Leave to Amend Complaint	49
12/22/94	Fisher Controls International, Inc.'s Motion for Partial Summary Judgment	50

MILWAUKEE DIE CASTING CO. v. FISHER CONTROLS INTERNATIONAL, INC.  
AND MONSANTO COMPANY

U.S. District Court - Eastern District of Wisconsin  
Case No. 93-C-0325

<u>DATE</u>	<u>TITLE</u>	<u>TAB</u>
08/05/94	Renewal of Notices of Deposition (Defendant, Fisher Controls International, Inc. will take the depositions of the following witnesses: Robert E. Glaser, Esq. on September 1, 1994; Clay Mock, Esq. on September 2, 1994; George Slyman, Jr. on September 8, 1994 and Theresa A. Slyman on September 9, 1994)	27
08/25/94	Motion for Leave to Withdraw as Counsel of Record (by Pugh, Jones & Johnson, P.C. and Brown & Bryant, P.C. for plaintiffs Milwaukee Die Casting Co. and Theresa A. Slyman)	28
08/25/94	Affidavit of Walter Jones, Jr. in Support of Motion for Leave to Withdraw as Counsel of Record	29
09/06/94	Summary of Defendant's Position (with Exhibits)	30
09/09/94	Court Minutes (Plaintiffs have 14 days from the date of this hearing to substitute counsel; within 5 days of this hearing, defendants' counsel shall file documentation of their fees and costs on the motions to withdraw; plaintiffs have 14 days of this hearing in which to pay these fees or case shall be dismissed for failure to prosecute and with prejudice)	31
09/26/94	Defendant's Response to Motion for Substitution of Lead Counsel Dated September 16, 1994	32
10/04/94	Plaintiffs' First Set of Interrogatories	33
10/04/94	Plaintiffs' First Request for Documents	34
10/12/94	Motion Under Local Rule 6.07 for Reconsideration of the Court's September 29, 1994 Order Allowing Plaintiffs to Substitute Counsel	35
10/21/94	Motion for Leave to File Response of Plaintiffs' Former Counsel to Motion for Reconsideration	36
10/21/94	Response of Plaintiffs' Former Counsel to Motion for Reconsideration	37

MILWAUKEE DIE CASTING CO. v. FISHER CONTROLS INTERNATIONAL, INC.  
AND MONSANTO COMPANY

U.S. District Court - Eastern District of Wisconsin  
Case No. 93-C-0325

<u>DATE</u>	<u>TITLE</u>	<u>TAB</u>
03/24/94	Notice of Deposition and Request for Production of Documents (to Richard J. Sankovitz, Esq. - Defendant, Fisher Controls International shall take the deposition of Robert E. Glaser and Clay Mock)	17
03/24/94	Notice of Depositions (to Richard J. Sankovitz, Esq. - Defendant, Fisher Controls International shall take the deposition of Charles Zeal and David Schultz)	18
03/24/94	Notice of Deposition Under Rule 30(b) (G. Slyman, Jr.) (on April 28, 1994)	19
03/24/94	Notice of Deposition Under Rule 30(b) (T. Slyman) (on April 29, 1994)	20
04/21/94	Defendant's Rule 6.07 Motion for Establishment of Deadlines in View of Withdrawal of Counsel (with Exhibits)	21
05/10/94	Defendant's Response to Motion for Leave to Withdraw as Counsel of Record and Rule 6.07 Motion for Establishment of Deadlines and Extension of the Pretrial Schedule (with Exhibits)	22
05/17/94	ORDER - Whyte Hirschboeck's May 4, 1994 renewed Motion to Withdraw as Counsel for the Plaintiffs is Denied, & this action shall be dismissed for lack of prosecution unless plaintiffs move to substitute counsel or submit evidence that Whyte Hirschboeck is continuing to prosecute this case within 30 days of the date of this Order	23
06/22/94	Motion for Substitution of Lead Counsel (for Plaintiff)	24
06/22/94	Supplemental Affidavit of Richard J. Sankovitz (for Plaintiff)	25
07/05/94	ORDER ( <u>Granting</u> plaintiffs' June 22, 1994 motion for substitution of lead counsel; defendants' letter motion to dismiss the case is <u>Denied</u> )	26

**MILWAUKEE DIE CASTING CO. V. FISHER CONTROLS INTERNATIONAL, INC.**  
**AND MONSANTO COMPANY**

U.S. District Court - Eastern District of Wisconsin  
Case No. 93-C-0325

<u>DATE</u>	<u>TITLE</u>	<u>TAB</u>
04/02/93	Summons, Complaint and Consent to Proceed Before a U.S. Magistrate Judge	1
08/30/93	Stipulation and ORDER (defendants time to answer Complaint is extended to September 27, 1993)	2
09/27/93	Certificate of Interest	3
09/27/93	Answer of Fisher Controls International, Inc. (motion to dismiss)	4
09/27/93	Defendant Monsanto Company's Motion to Dismiss	5
09/27/93	Memorandum in Support of Monsanto Company's Motion to Dismiss	6
09/27/93	Consent to Proceed Before a U.S. Magistrate Judge (Refusal to Consent by Defendants, Fisher Controls International, Inc. and Monsanto Company)	7
11/16/93	Plaintiffs' Responses to Mandatory Interrogatories	8
12/01/93	Amended Answer of Fisher Controls International, Inc.	9
12/01/93	Defendant Fisher Controls International, Inc.'s Rule 6.07 Motion for Leave to File Amended Answer	10
01/17/94	Defendant Fisher Controls International Inc.'s Responses to Mandatory Interrogatories	11
01/31/94	Fisher Controls' First Set of Document Requests	12
03/14/94	Plaintiffs' Responses to Fisher Controls' First Set of Document Requests (Milwaukee Die Casting and Theresa A. Slyman)	13
03/21/94	Plaintiffs' Expert Witness Disclosure (expert witnesses: David Shultz and Charles Zeal)	14
03/23/94	Subpoena (of Defendant to Robert E. Glaser, Esq. - deposition on April 20, 1994)	15
03/23/94	Subpoena (of Defendant to Clay Mock, Esq. - deposition on April 21, 1994)	16

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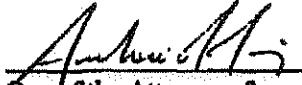
**No. 93-C-0325**  
**Judge Reynolds**

Pursuant to Federal Rule of Civil Procedure 56, defendant Fisher Controls International, Inc. ("Fisher") hereby moves this Court for summary judgment on plaintiffs' state law claims for breach of contract, negligent and strict liability misrepresentation and fraud. As set forth in the accompanying Memoranda in Support, each of plaintiffs' state law claims are barred by the applicable six-year Wisconsin statute of limitations.

WHEREFORE, defendant Fisher Controls International, Inc. respectfully requests that this Court grant its motion and enter judgment in its favor and against plaintiffs on plaintiffs' claims for breach of contract, negligent and strict liability misrepresentation and fraud.

Dated: December 22, 1994

Respectfully submitted,

  
One of the Attorneys for  
Defendant Fisher Controls  
International, Inc.

Michael Ash  
GODFREY & KAHN, S.C.  
780 North Water Street  
Milwaukee, Wisconsin 53202  
(414) 273-3500

Andrew R. Running  
Robert B. Ellis  
KIRKLAND & ELLIS  
200 East Randolph Drive  
Chicago, Illinois 60601  
(312) 861-2000

Of Counsel:

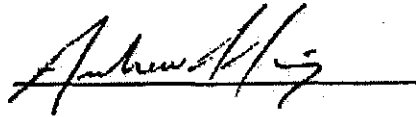
Michael K. Shannon, Esq.  
Corporate Counsel  
Fisher Controls International, Inc.  
8000 Maryland Avenue  
P. O. Box 14755  
St. Louis, Missouri 63178

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing FISHER CONTROLS  
INTERNATIONAL, INC'S MOTION FOR PARTIAL FOR SUMMARY JUDGMENT to be  
served on the following persons by first-class, postage prepaid, U.S. mail:

James J. Figliulo, Esq.  
Carl A. Gigante, Esq.  
Carmen D. Caruso, Esq.  
Foran & Schultz  
30 North La Salle Street  
Suite 3000  
Chicago, Illinois 60602

Richard J. Sankovitz, Esq.  
Whyte Hirschboeck Dudek, S.C.  
111 East Wisconsin Avenue  
Suite 2100  
Milwaukee, Wisconsin 53202



DATED: December 22, 1994